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Supreme Court of the United States

OCTOBER TERM, 2000

CRYSTAL M. FERGUSON, *et al.*,

Petitioners,

—v.—

THE CITY OF CHARLESTON, SOUTH CAROLINA, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX
VOLUME III OF III, (Pages 1131 to 1420)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF LAVERNE SINGLETON

[LAVERNE SINGLETON 51]

Q. OF SOUTH CAROLINA?
A. YES, SIR.
Q. AND WITH FIVE CHILDREN, THIS MIGHT BE DIFFICULT, BUT DO YOU REMEMBER HIS DATE OF BIRTH?
A. HE WAS BORN NOVEMBER THE 9TH, 1989.
Q. PRIOR TO NOVEMBER 9, PRIOR TO THE BIRTH OF ARNEL, HAD YOU HAD ANY PRENATAL CARE?
A. YES, SIR.
Q. WHERE WAS THAT PRENATAL CARE?
A. MEDICAL UNIVERSITY.
Q. AND DURING - WELL, LET ME WITHDRAW THAT, PLEASE.
DESCRIBE JUST GENERALLY, MS. SINGLETON, THAT PRENATAL CARE. HOW MANY TIMES DID YOU GO TO THE MEDICAL UNIVERSITY FOR PRENATAL CARE?
A. WHEN I FIRST BEGIN I STARTED ONCE A MONTH. AND THEN AFTER THAT EVERY WEEK ONCE A WEEK.
Q. OKAY.
MR. WHERRY: YOUR HONOR, COULD I APPROACH THE WITNESS TO POUR SOME WATER FOR HER?
THE COURT: SURE.
THE WITNESS: THANK YOU.

Q. (BY MR. WHERRY, CONTINUING) DURING ANY OF THOSE VISITS - WELL, LET ME WITHDRAW THAT.

DESCRIBE JUST GENERALLY WHAT THEY WOULD DO FOR YOU OR TO YOU DURING THOSE PRENATAL VISITS, JUST GENERALLY?

[LAVERNE SINGLETON 52]

A. WELL THEY TAKE YOUR WEIGHT. THEY TAKE YOUR BLOOD PRESSURE. AND THEN SOMETIME THEY WOULD DRAW BLOOD AND GET A URINE SPECIMEN.

Q. EACH TIME YOU GO?

A. NORMALLY.

Q. OKAY. YOU SAID THAT YOUR BABY WAS BORN NOVEMBER 9TH?

A. YES, SIR.

Q. ANY OF THE TIMES THAT YOU WENT TO THE MEDICAL UNIVERSITY PRIOR TO NOVEMBER 9TH, DID ANYONE SPEAK TO YOU ABOUT THE USE OF COCAINE OR OTHER DRUGS?

A. NO, SIR.

Q. DID YOU RECEIVE ANY SUBSTANCE ABUSE COUNSELING?

A. NO, SIR.

Q. DID ANYONE EVER MENTION TO YOU THAT YOU TESTED POSITIVE FOR COCAINE?

A. WOULD THAT BE DURING THE -

Q. PRIOR TO NOVEMBER 9TH?

A. NO, SIR.

Q. BEFORE YOUR BABY WAS BORN?

A. NO, SIR.

Q. DID ANYONE SHOW YOU A VIDEO ABOUT THE HARMFUL EFFECTS OF COCAINE AND ALCOHOL ON PREGNANT WOMEN?
A. NO, SIR. I CAN'T REMEMBER.
Q. OKAY. DID ANYONE GIVE YOU A LIST OF PLACES THAT WERE AVAILABLE FOR YOU TO GO FOR SUBSTANCE ABUSE COUNSELING?

[LAVERNE SINGLETON 53]

A. NO, SIR.
Q. ON NOVEMBER 9TH, DID YOU DELIVER YOUR BABY AT THE HOSPITAL?
A. NO, SIR.
Q. WHERE DID YOU DELIVER THE BABY?
A. PRIOR TO GETTING TO THE HOSPITAL, IN THE AMBULANCE. IT WAS ALREADY HERE.
Q. SO I TAKE IT THAT YOU EXPERIENCED LABOR, YOU OR SOMEBODY ON YOUR BEHALF CALLED THE AMBULANCE?
A. YES, SIR.
Q. AND I'M SORRY, YOU HAVE TOLD US, BUT WHERE DID YOU LIVE THEN? NO, YOU HAVEN'T TOLD US. WHERE DID YOU LIVE THEN?
A. HOLLYWOOD, SOUTH CAROLINA.
Q. WHERE IS THAT?
A. HOLLYWOOD.
Q. HOW FAR IS THAT FROM CHARLESTON?
A. ABOUT 12 MILES FROM HERE.
Q. IN THE 12-MILE RIDE BY AMBULANCE, WAS THE BABY BORN?
A. YES, SIR.

Q. AND DID THE AMBULANCE CONTINUE ON NEVERTHELESS?
A. YES, SIR.
Q. TO THE MEDICAL UNIVERSITY?
A. YES, SIR.
Q. YOU AND THE BABY WERE TAKEN IN THE HOSPITAL?
A. YES, SIR.

* * *

[LAVERNE SINGLETON 60]

THE COURT: OKAY. PROCEED.
Q. (BY MR. WHERRY, CONTINUING) MS. SINGLETON, WHEN WE BROKE FOR LUNCH - WHEN WE BROKE FOR LUNCH, I THINK YOU HAD JUST DESCRIBED HAVING GIVEN BIRTH TO YOUR BABY IN THE AMBULANCE AND THEN COMING INTO THE HOSPITAL FOR MEDICAL TREATMENT; IS THAT RIGHT?
A. YES, SIR.
Q. THE NEXT MORNING YOU SAID YOU LEFT THE HOSPITAL, CORRECT?
A. YES, SIR.
Q. THE NEXT MORNING, LET ME DIRECT YOUR ATTENTION TO THAT MORNING. DID YOU HAVE OCCASION TO MEET NURSE SHIRLEY BROWN?
A. YES, SIR.
Q. AND WOULD YOU DESCRIBE FOR THE JURY, PLEASE, THAT MEETING, WHAT SHE SAID TO YOU AND WHAT YOU SAID TO HER.
A. SHE CAME INTO THE ROOM AND THERE WAS ANOTHER PATIENT IN THE ROOM AND SHE CLOSED -
Q. GO AHEAD.

A. SHE CAME INTO THE ROOM. AND THERE WAS ANOTHER PATIENT IN THE ROOM. AND SHE CLOSED THE CURTAIN SO THAT PERSON WON'T HEAR. AND SHE SAID YOU WERE TESTED POSITIVE FOR COCAINE. AND I SAID WHAT. AND SHE SAY YES. AND SHE SAID SHE JUST LOOKED AT ME IN A GAZE AND SHE SAID I'LL BE RIGHT BACK. AND SO SHE LEFT THE ROOM. AND SHE CAME BACK AND SHE SAID YOU ARE BEING ARRESTED FOR HAVING COCAINE IN YOUR URINE WHILE DELIVERING. AND I SAID - I STARTED TO CRY. AND -

[LAVERNE SINGLETON 61]

Q. LET ME STOP YOU THERE. HAD YOU USED COCAINE DURING YOUR PREGNANCY?

A. YES, SIR.

Q. YOU SAID THAT YOU STARTED TO CRY. WITHDRAW THAT.

IN YOUR PRENATAL CARE AT MUSC, HAD ANYONE ADVISED YOU THAT THE USE OF COCAINE WAS HARMFUL TO YOUR BABY?

A. NO, SIR.

Q. ALL RIGHT. YOU SAID THAT YOU STARTED TO CRY WHEN YOU WERE TOLD THAT YOU WERE GOING TO BE ARRESTED. WHAT HAPPENED NEXT?

A. I TOLD HER TO - WOULD SHE PLEASE WAIT UNTIL I GET MY -- CLOTHES. AND SHE SAID I DON'T KNOW ABOUT THAT. AND THEN

Q. HOW WERE YOU DRESSED WHEN SHE TOLD YOU?
A. IN THE HOSPITAL GOWN.
Q. WHICH YOU DESCRIBED EARLIER THIS MORNING?
A. YES, SIR.
Q. GO AHEAD, PLEASE.
A. AND A DETECTIVE LADY CAME IN, A WOMAN. SHE WAS PREGNANT. AND COPS CAME IN ALONG WITH HER.
Q. HOW MANY?
A. ONE. AND A DETECTIVE, A WOMAN.
Q. THE DETECTIVE, MALE OR FEMALE?
A. A MALE. I'M SORRY. FEMALE.
Q. DO YOU KNOW HER NAME?
A. NO, SIR.

[LAVERNE SINGLETON 62]

Q. OKAY. WHAT HAPPENED WHEN THE DETECTIVE AND THE UNIFORMED OFFICER CAME INTO THE ROOM?
A. THEY BROUGHT A WHEELCHAIR AND SAT ME IN THE WHEELCHAIR. AND TOOK ME TO A ROOM OFF THE HOSPITAL AND READ MY RIGHTS. AND --
Q. WERE YOU HANDCUFFED AT THAT TIME OR NOT?
A. YES, SIR.
Q. WERE YOU HANDCUFFED IN FRONT OF YOU OR BEHIND YOUR BACK?
A. IN THE FRONT.
Q. OKAY. DID YOU HAVE SHACKLES ON OR NOT? LEG IRONS?
A. I HAD CUFFS ON MY LEGS.
Q. OKAY. AND YOU HAD - I'M SORRY, YOU WERE IN A

WHEELCHAIR, TAKEN OFF TO ANOTHER ROOM?
A. YES, SIR.
Q. WHO READ YOU YOUR RIGHTS?
A. THE DETECTIVE.
Q. OKAY. AND THEN WHAT HAPPENED?
A. THEY - SHE GOT A SHEET AND PUT OVER MY HAND AND MY FEET. SHE AND - MS. SHIRLEY BROWN AND THE DETECTIVE LADY AND THE COPS TOOK ME DOWN THE HALL TO THE BACK OF THE HOSPITAL.
Q. DID NURSE SHIRLEY BROWN GO WITH YOU WITH THE DETECTIVE AND THE OTHER OFFICER?
A. YES, SIR.
Q. THEY TOOK YOU DOWN THE HALL. HOW DID YOU FEEL BEING WHEELED DOWN THE HALL, HAVING JUST GIVEN BIRTH, WITH

[LAVERNE SINGLETON 63]

HANDCUFFS, SHACKLES AND THE SHEET OVER YOU?
A. EMBARRASSED.
Q. WHEN YOU GOT DOWN THE HALL, DID YOU GET TO AN IN-AND-OUT SIDE DOOR?
A. YES.
Q. WERE YOU TAKEN OUTSIDE?
A. YES, SIR.
Q. WHAT HAPPENED WHEN YOU GOT OUTSIDE?
A. DETECTIVE CAR WAS ALREADY PARKED IN THE BACK. AND THEY GOT ME OUT OF THE CAR AND PUT ME - PUT MY HEAD DOWN, FRONT SEAT OR THE BACK SEAT.

Q. DID YOU HAVE HELP GETTING OUT OF THE WHEELCHAIR OR NOT?
A. YES, SIR.
Q. DID THE HANDCUFFS AND SHACKLES REMAIN ON?
A. YES, SIR.
Q. DID THE SHEET REMAIN OVER YOU OR WAS THAT TAKEN OFF?
A. THAT TAKEN.
Q. NOW WHEN YOU WERE PUT IN THE CAR, DID YOU HAVE HELP GETTING INTO THE CAR?
A. YES, SIR.
Q. WHAT KIND OF HELP? WHAT WAS DONE TO YOUR BODY TO GET YOU INTO THE CAR?
A. ONE, A DETECTIVE GUY, UNIFORMED OFFICER, GRAB THIS ARM AND THE LADY, THE DETECTIVE GRABBED THIS ARM AND THEN HELPED ME TO THE CAR.

[LAVERNE SINGLETON 64]

Q. DID YOU HAVE TO BEND DOWN TO GET INTO THE CAR?
A. YES, SIR.
Q. WAS THE BACK OF YOUR HOSPITAL GOWN OPEN?
A. YES, SIR.
Q. WERE YOU GIVEN ANY ADDITIONAL COVERING?
A. NO, SIR.
Q. ON YOUR DRIVE FROM THE HOSPITAL TO THE JAIL?
A. NO, SIR.
Q. DID YOU, MS. SINGLETON, GO DIRECTLY TO THE JAIL?
A. NO, SIR.

Q. WHERE DID YOU GO ON YOUR WAY TO THE JAIL?
A. THEY TOOK ME TO THE - THE HOLDING CELL ON IN THE CITY.
Q. DID YOU GO DIRECTLY THERE?
A. YES, SIR.
Q. WHEN YOU GOT TO THE HOLDING CELL, IS THAT LEEDS AVENUE?
A. NO, SIR.
Q. OKAY. WHEN YOU GOT TO THE HOLDING CELL WERE YOU TAKEN INSIDE?
A. YES, SIR.
Q. DID YOU HAVE HELP GETTING OUT OF THE CAR?
A. YES, SIR.
Q. SAME PEOPLE?
A. YES, SIR.
Q. WHEN YOU WENT INTO THE HOLDING CELL WERE YOU COVERED WITH ANYTHING OTHER THAN THE HOSPITAL GOWN?

[LAVERNE SINGLETON 65]

A. NO, SIR.
Q. AND WHEN YOU WENT INTO THAT JAIL SECTION, THAT BUILDING, WERE YOU COVERED WITH ANYTHING OTHER THAN THE HOSPITAL GOWN?
A. NO, SIR.
Q. WAS IT STILL OPEN IN THE BACK?
A. YES, SIR.
Q. WERE YOU PROCESSED IN BY A POLICE OFFICER?
A. YES, SIR.
Q. WHAT DOES THAT PROCESS CONSIST OF? WHAT COULD THEY DO?

A. THEY TOOK MUGSHOTS, THEY FINGERPRINT ME AND THEN TOOK ME BACK.
Q. DID THEY ASK YOU QUESTIONS, YOUR NAME AND WHERE YOU LIVED?
A. OH, YES.
Q. WHO DID THAT, MALE OR FEMALE OFFICERS?
A. MALES.
Q. STILL IN THE HOSPITAL GOWN?
A. YES, SIR.
Q. WHAT WAS YOUR PHYSICAL CONDITION AT THAT TIME, MS. SINGLETON? WHAT WAS YOUR PHYSICAL CONDITION?
A. I WAS STILL BLEEDING AND I ONLY HAD WHAT THEY --
Q. I'M GOING TO GET TO THAT. WHEN YOU LEFT THE HOSPITAL, WERE YOU GIVEN ANY MEDICAL SUPPLIES THAT WOULD INCLUDE, FOR INSTANCE, SANITARY NAPKINS?
A. NO, SIR.

[LAVERNE SINGLETON 66]

Q. WERE YOU GIVEN ANY CLOTHING?
A. NO, SIR.
Q. WERE YOU GIVEN YOUR OWN CLOTHING BACK?
A. NO, SIR.
Q. AFTER YOU WERE PROCESSED THROUGH THIS HOLDING AREA, WERE YOU PUT IN A CELL?
A. YES, SIR.
Q. HOW MANY PEOPLE WERE IN THE CELL WITH YOU?
A. NO ONE.

Q. DESCRIBE THE CELL.
A. IT WAS COLD. IT WAS - I DON'T HAVE NO SHOES ON. THE SHOES I HAD WAS PAPER SHOES.
Q. PAPER SHOES?
A. YES, SIR.
Q. WHERE DID YOU GET THE PAPER SHOES?
A. FROM THE HOSPITAL.
Q. CONTINUE.
A. THE COMMODE HAD OTHER PEOPLE WASTE ON IT. BLOOD. AND I WANTTO URINATE SO I HAD TO STOOD UP. I HAD TO GET UP AND YOU KNOW I DIDN'T HAVE ANY BOTTOM HIT THE STOOL.
Q. WHY?
A. BECAUSE IT HAD BLOOD ON IT FROM SOMEONE ELSE.
Q. CONTINUE.
A. AND THEY HAD - IT WAS A COT, BUT - THE COT HAD A MAT. COLD. IT WAS COLD. AND SO I SAT THERE UNTIL ABOUT SEVEN

[LAVERNE SINGLETON 67]

HOURS AND THEN THEY TOOK ME FROM THERE.
Q. LET ME STOP YOU THERE. DID YOU HAVE ANY BLANKETS?
A. NO, SIR.
Q. DID YOU HAVE A PILLOW?
A. NO, SIR.
Q. DID YOU HAVE CLOTHING OTHER THAN THE HOSPITAL GOWN?
A. NO, SIR.
Q. TELEVISION?
A. NO, SIR.

Q. BOOKS?
A. NO, SIR.
Q. VISITORS?
A. NO, SIR.
MR. HOOD: THE COUNTY IS NOT A DEFENDANT IN-THIS. ALL OF THIS IS OCCURRING IN THE COUNTY JAIL. LIKE THE LAST PLAINTIFF, I THINK WE OUGHT TO MOVE ON TO SOMETHING RELEVANT. THIS IS THE COUNTY JAIL, NOT THE CITY.
MR. WHERRY: IF THE COURT WOULD LIKE - MAY I BE HEARD.
THE COURT: I'M NOT SURE THAT THE METHOD OF QUESTIONING IS NOT OBJECTIONABLE BECAUSE IT'S LEADING.
MR. HOOD: IT IS LEADING.
THE COURT: AND TO SOME EXTENT IT'S ARGUMENTATIVE, BUT AS FAR AS THE CONDITIONS THAT SHE ENCOUNTERED IN THE JAIL, I'M GOING TO LET HIM GO INTO THAT.

[LAVERNE SINGLETON 68]

MR. WHERRY: THANK YOU, SIR.
Q. (BY MR. WHERRY, CONTINUING) HOW LONG WERE YOU IN THAT JAIL CELL?
A. ABOUT SEVEN TO EIGHT HOURS.
Q. DID THERE COME A POINT IN TIME AT WHICH YOU WERE TAKEN OUT OF THAT JAIL CELL?
A. YES.
Q. WHERE WERE YOU TAKEN?
A. LEEDS AVENUE.
Q. HOW DID YOU GET THERE?

A. THE POLICE CAR.
Q. WHO TOOK YOU?
A. SOME MALE POLICEMANS.
Q. HOW WERE YOU DRESSED WHEN THE MALE POLICEMAN TOOK YOU?
A. IN THE HOSPITAL GOWN.
Q. DESCRIBE THE CONDITION OF THE BACK OF THAT HOSPITAL GOWN WHEN THE MALE POLICEMAN TOOK YOU?
A. IT WAS UP TIGHT LIKE UP HERE AND TIED RIGHT HERE, BUT IT STILL HAD OPENINGS.
Q. WHAT WAS YOUR PHYSICAL CONDITION AT THE TIME WHEN THEY TOOK YOU AFTER THE SEVEN HOURS?
A. I WAS STILL - MY BOTTOM WAS STILL OPEN FROM HAVING THE BABY. I HAD NO UNDERWEAR ON BESIDES THE SANITARY NAPKIN THAT SHE GAVE ME. WHEN I GOT THERE THE GOWN HAD BLOOD ALL OVER IT
Q. WHAT GOWN HAD BLOOD ALL OVER IT?

[LAVERNE SINGLETON 69]

A. THE HOSPITAL GOWN.
Q. WHEN YOU GOT WHERE IT HAD BLOOD ALL OVER IT?
A. LEEDS AVENUE.
Q. DESCRIBE WHAT HAPPENED WHEN YOU GOT TO LEEDS AVENUE?
A. WHEN I GOT THERE, MY HAND WAS STILL CUFFED AND I WAS TRYING TO TELL THE COPS TO GIVE ME SOMETHING TO COVER UP WITH, BEHIND ME IS DIRTY. AND THEY SAID STAND AGAINST THE WALL TILL WE CAN GET SOMETHING TO COVER YOUR BACK.

Q. WOULD YOU REPEAT THAT PLEASE, I COULDN'T HEAR YOU BACK HERE.
A. WHEN I GOT THERE, MY HAND WAS STILL - MY ARM WAS STILL- CUFFED AND MY LEG. AND I TOLD THEM THAT GIVE ME SOMETHING TO COVER MY BACK WITH BECAUSE MY GOWN WAS DIRTY.
Q. WERE YOU GIVEN SOMETHING TO COVER YOUR BACK WITH BECAUSE YOUR GOWN WAS DIRTY?
A. NOT RIGHT AWAY. HE TOLD ME TO STAND AGAINST THE WALL. MY BACK TO THE WALL.
Q. WERE YOU PROCESSED INTO THAT JAIL?
A. YES, SIR.
Q. WHAT WAS THE GENDER OR SEX OF THE PEOPLE WHO PROCESSED. YOU INTO THAT JAIL?
A. MALES.
Q. AFTER YOU WERE PROCESSED IN, WHERE DID YOU GO?
A. THEY TOOK ME TO THE BIG CELL.
Q. HOW MANY PEOPLE WERE IN THE BIG CELL WITH YOU, IF ANYONE

[LAVERNE SINGLETON 70]

ELSE, I'M SORRY?
A. WHOLE BUNCH OF OTHER LADIES.
Q. HOW LONG WERE YOU IN THAT CELL?
A. FOR TWO DAYS.
Q. DESCRIBE THAT CELL AND THE FURNISHING OR LACK OF FURNISHINGS THAT WERE IN THERE?
A. IT WAS COLD. IT WAS COLD. THE LADIES, THEY WAS MAKING A

JOKE AT ME. FUN AT ME. THEY MADE SLY REMARKS AT ME. I WAS EMBARRASSED AND I HAD NO CHOICE BUT TO TAKE IT.

Q. WERE YOU GIVEN CLOTHING WHILE YOU WERE IN THERE?

A. PRIOR TO THE SECOND DAY ONE OF THE MAITRE D' CAME - WELL THAT NIGHT WHEN THE MAITRE D' CAME SHE GAVE ME A SANITARY NAPKIN AND SHE SAID YOUR SISTER JUST BROUGHT YOUR CLOTHES AND HERE IT IS.

Q. I THINK YOU HAVE ANSWERED THIS, BUT HOW LONG WERE YOU IN THAT BIG CELL?

A. FOR ABOUT TWO DAYS.

Q. THEN WHERE DID YOU GO AFTER - IF YOU WENT ANYPLACE?

A. AFTER - SAY IT AGAIN, I DIDN'T HEAR.

Q. AFTER THOSE TWO DAYS, WHERE DID YOU GO?

A. MY SISTERS CAME AND THEY GOT ME OUT.

Q. AT ANYTIME WHEN YOU WERE AT MUSC OR THE JAIL, DID ANYONE ADVISE YOU OF ANYPLACE WHERE YOU CAN GET SUBSTANCE ABUSE TREATMENT OR COUNSELING?

A. NO, SIR.

[LAVERNE SINGLETON 71]

Q. WHEN YOU WENT TO MUSC, WERE YOU TOLD THAT THE RESULTS OF THE MEDICAL TESTS THEY WERE CONDUCTING WOULD BE TURNED OVER TO THE SOLICITOR'S OFFICE OR TO THE POLICE?

A. NO, SIR.

Q. DID YOU GIVE YOUR CONSENT TO TURN OVER YOUR MEDICAL INFORMATION TO THE SOLICITOR'S OFFICE OR THE POLICE?
A. NO, SIR.
Q. DID YOU GIVE YOUR CONSENT TO TURN YOUR MEDICAL INFORMATION OVER TO ANYONE?
A. NO, SIR.
Q. DID ANYONE INQUIRE OF YOU AS TO DRUG OR OTHER SUBSTANCE ABUSE BY THE FATHER OF THE CHILD?
A. NO, SIR.
Q. I MEAN NO DISRESPECT TO YOU, BUT NO OTHER WAY TO ANSWER THE QUESTION: DO YOU KNOW WHO THE FATHER OF THE CHILD WAS?
A. YES, SIR.
Q. WHEN YOU CALLED THE AMBULANCE TO GO TO MUSC, WHY DID YOU DO THAT?
A. BECAUSE AT THAT TIME THE OTHER HOSPITALS WOULD NOT TAKE MEDICAID CARD, THEY WILL ONLY TAKE RED CROSS AND OTHER CARD, EXCEPT FOR WHILE ON MEDICAID.
Q. WHEN YOU WERE RELEASED AND YOU WENT HOME, DID YOUR BABY GO HOME WITH YOU?
A. NO, SIR.
Q. WHAT HAPPENED TO YOUR BABY?

[LAVERNE SINGLETON 73]

A. YES, SIR.
Q. AT THIS POINT IN TIME IN YOUR LIFE, NOW, TODAY, AS WE'RE IN THIS COURTROOM, DESCRIBE TO THE JURY, PLEASE, WHAT EFFECT

THIS EXPERIENCE WITH THE MEDICAL UNIVERSITY AND THE POLICE HAS HAD ON YOUR LIFE?

A. I DON'T TRUST THE SYSTEM ANY MORE.

Q. PARDON ME?

A. I DON'T TRUST THE SYSTEM ANYMORE.

Q. WHY?

A. YOU DON'T HAVE ANY PRIVACY. THEY TAKE ALL OF THAT WAY FROM YOU. PEOPLE MAKE YOUR CHOICES FOR YOU. YOU CAN'T ANSWER FOR YOURSELF. AND FROM NOW ON I'LL BE RIGHT PARTICULAR OF WHOM I GO TO FOR MEDICAL CARE.

Q. WERE YOU TOLD WHAT YOU WERE ARRESTED FOR, WHAT CRIME?

A. SHE SAID I WAS TESTED POSITIVE FOR COCAINE IN MY URINE.

Q. WERE YOU PROSECUTED FOR THAT? DID YOU GO TO TRIAL?

A. NO, SIR.

Q. WHAT HAPPENED?

A. THEY TOLD ME - I MEAN, THEY TOLD ME TO GO - BEFORE THEY TOLD ME TO GO TO SUBSTANCE ABUSE I VOLUNTEERED, I WENT MYSELF. AND THAT WAS THE END OF IT.

Q. THE CHARGE WAS FINALLY DISMISSED OR OTHERWISE DISPOSED OF?

A. YES.

MR. WHERRY: MAY I HAVE A MOMENT, PLEASE, YOUR

* * *

A. YES, SIR.
Q. TWO OF THOSE CHILDREN WERE BORN WHILE YOU WERE TAKING COCAINE?
A. YES.
Q. YOU STARTED USING COCAINE WHEN YOU WERE 18 OR 19 YEARS OLD?
A. I CAN'T REMEMBER.
Q. WHEN YOU WERE A TEENAGER?
A. I CAN'T MEMBER THAT FAR BACK. I'M THIRTY-NINE YEARS OLD NOW.
Q. YOU HAVE BEEN TAKING COCAINE ABOUT TWENTY YEARS, HAVEN'T YOU?
A. NO.
Q. WEREN'T YOU A DIME A BAG COCAINE USER?
A. NO.
Q. WHEN I ASKED YOU ABOUT THAT BEFORE, YOU SAID SOMETHING ABOUT USING A ONE DIME BAG A WEEK OF COCAINE. WHAT IS THAT?
A. I NEVER SPOKE TO YOU BEFORE. THIS IS MY FIRST TIME SPEAKING TO YOU.
Q. SOMEONE FROM MY OFFICE THAT TOOK YOUR DEPOSITION?
A. NO.
Q. YOU DIDN'T USE THE WORD I'M A ONE DIME BAG A WEEK COCAINE USER?
A. NO.
Q. OKAY. BUT YOU HAVE BEEN USING COCAINE FOR A LONG TIME?

* * *

Q. (BY MR. HOOD, CONTINUING) TURN TO PAGE 29, PLEASE. ON LINE 8, I BELIEVE CHRISTY COMPANION WAS ASKING YOU QUESTIONS. AND SHE ASKED WHEN DID YOU FIRST START USING COCAINE. AND YOUR ANSWER WAS, "I WAS ABOUT 18 OR 19."

WAS THAT YOUR TESTIMONY UNDER OATH WITH YOUR LAWYER PRESENT BEFORE A COURT REPORTER ON AUGUST THE 23, 1995?

A. I GUESS SO.

Q. DIDN'T I READ IT CORRECTLY?

A. YES, SIR.

Q. AND TURN TO THE NEXT PAGE, PAGE 30. LINE 23. YOU WERE ASKED THE QUESTION, "HOW OFTEN WOULD YOU USE - SO UPON AVERAGE WOULD YOU USE ONE DIME BAG PER WEEK?"

AND YOUR ANSWER WAS?

A. "YES."

Q. THANK YOU.

NOW, YOU TOLD US ABOUT THE ARREST, WHEN YOU TESTED POSITIVE. WHEN YOU HAD YOUR COCAINE BABY ON NOVEMBER THE 9TH, 1989, YOU WERE ARRESTED ON NOVEMBER THE 10, 1989, YOU HAD BEEN ARRESTED BEFORE AND SINCE, HAVEN'T YOU?

MR. WHERRY: I OBJECT.

THE COURT: I'M GOING TO OVERRULE YOUR OBJECTION.

MR. WHERRY: THE "BEFORE" PART WAS MY PROBLEM.

THE COURT: SAY WHAT?

MR. WHERRY: HE ASKED IF SHE HAD BEEN ARRESTED BEFORE.

[LAVERNE SINGLETON 102]

THE COURT: HE SIMPLY ASKED THE QUESTION.

MR. WHERRY: THERE IS NO GOOD FAITH BASIS FOR THAT.

THE COURT: WHAT ABOUT THAT, MR. HOOD?

THE COURT: I DON'T KNOW THE ANSWER TO IT UNTIL SHE ANSWERS IT.

MR. WHERRY: THAT'S NOT TRUE. WE JUST SPENT 20 MINUTES GOING OVER THAT.

THE COURT: WELL, BASED ON THE SHOWING THAT YOU MADE TO THIS COURT OUTSIDE OF THE PRESENCE OF THE JURY, THERE WAS NO CONTENTION THAT SHE HAD BEEN ARRESTED BEFORE THIS NOVEMBER 10, 1989, ARREST. NOW, IF YOU HAVE EVIDENCE TO THE CONTRARY I'LL BE GLAD TO HEAR IT, BUT THAT'S WHAT YOU REPRESENTED TO THE COURT AT THAT TIME.

MR. HOOD: MAY I JUST ASK, I DON'T KNOW THE ANSWER. THE FIRST -

MR. WHERRY: I OBJECT.

THE COURT: WELL, YOU REPRESENTED TO THE COURT WHAT YOU WANTED TO ASK THIS WITNESS.

MR. HOOD: OKAY.

THE COURT: AND THERE WAS NOTHING ABOUT ANY PRIOR

ARRESTS. NOW YOU HAVE ALREADY ASKED THIS WITNESS UNDER OATH ABOUT THE ARRESTS, THAT'S HOW YOU GOT THE INFORMATION THAT YOU GOT.

MR. HOOD: OKAY. I'LL GO TO -

THE COURT: NOW, LADIES AND GENTLEMEN OF THE JURY

* * *

[LAVERNE SINGLETON 110]

IT WOULD BE NICE TO KNOW.

THE COURT: ALL RIGHT, MR. HOOD.

Q. (BY MR. HOOD, CONTINUING) HAVE I NOW REFRESHED YOUR MEMORY, YOU HAVE BEEN ARRESTED FOUR TIMES AND ON THREE OCCASIONS YOU SPENT THE NIGHT IN JAIL?

A. YES, SIR.

Q. THANK YOU.

YOU HAVE HAD FIVE CHILDREN?

A. YES.

Q. AND YOU WERE TELLING US ABOUT THE DELIVERY OF ONE IN NOVEMBER OF '89. THE CHILD'S NAME IS ARNEL. AND WHEN YOU WENT IN FOR THE DELIVERY OF THAT CHILD, THEY ASKED YOU TO SIGN A CONSENT FORM AT THE HOSPITAL. IS THIS YOUR SIGNATURE ON THIS CONSENT FORM?

A. YES.

MR. HOOD: I WOULD LIKE TO PUT IT INTO EVIDENCE WITHOUT OBJECTION.

THE COURT: ANY OBJECTION?

MR. WHERRY: NO.
DEPUTY CLERK: THAT WOULD BE DEFENDANT'S EXHIBIT 155.
Q. (BY MR. HOOD, CONTINUING) DID YOU READ THIS FORM?
A. NO, SIR.
Q. AND SO WHEN IT SAYS THAT I FURTHER CONSENT TO TESTING OF DRUGS IF DEEMED ADVISABLE BY MY PHYSICIAN, YOU DIDN'T KNOW

* * *

[LAVERNE SINGLETON 111]

THAT THEY WERE GOING TO TEST YOU FOR DRUGS?
A. NO, SIR.
Q. WELL THEY DID TEST YOU FOR DRUGS AND YOU TESTED POSITIVE BECAUSE YOU HAD COCAINE IN YOU, DIDN'T YOU?
A. YES, SIR.
Q. THAT WASN'T A GOOD THING TO BE DOING TO THAT LITTLE BABY WAS IT?
A. WELL, AT THE TIME I DIDN'T -
Q. AT THE TIME YOU -
A. AT THE TIME I DID NOT KNOW.
Q. WELL, YOU WENT OFF AND THEY PUT YOU IN SUBSTANCE ABUSE AND YOU DID THAT FOR AWHILE. YOU MADE IT FOR ABOUT THREE MONTHS AND THEN YOU FELL OFF AGAIN AND WENT BACK TO COCAINE, DIDN'T YOU?
A. YES, SIR.
Q. GOT PREGNANT AGAIN AND WENT BACK TO THE MEDICAL

UNIVERSITY AND HAD ANOTHER BABY. AND AGAIN THE BABY HAD COCAINE IN IT AND YOU HAD COCAINE IN YOU, RIGHT?

A. I GUESS SO.

Q. NOW THIS TIME YOU KNEW, BECAUSE YOU HAD BEEN TO SUBSTANCE ABUSE, YOU KNEW THAT COCAINE WASN'T ANY GOOD FOR YOU AND YOU KNEW IT WAS REAL BAD FOR THAT BABY, DIDN'T YOU?

A. NO, SIR.

Q. YOU STILL DIDN'T KNOW IT?

A. (WITNESS SHAKES HEAD.)

[LAVERNE SINGLETON 112]

Q. SO FOR THE THIRD TIME THEY PUT YOU IN SUBSTANCE ABUSE? THE SECOND COCAINE BABY THEY DIDN'T ARREST YOU, YOU AGREED TO GO TO SUBSTANCE ABUSE AND YOU STARTED THAT PROGRAM, DIDN'T YOU?

A. I DIDN'T GO TO SUBSTANCE ABUSE.

Q. YOU DIDN'T GO TO SUBSTANCE ABUSE?

A. NO.

Q. DID YOU GO TO THE CHARLESTON COUNTY SUBSTANCE ABUSE?

A. NO.

Q. DID YOU GO TO PRETRIAL INTERVENTION?

A. NO.

Q. DID YOU GO SOMEWHERE FOR COUNSELING AND HELP?

A. YES, SIR.

Q. WHERE DID YOU GO?

A. TO THE MEDICAL UNIVERSITY PSYCH WARD.
Q. AND FOR THAT SECOND BABY, NOVEMBER OF 1990, IS THIS YOUR SIGNATURE ON THE CONSENT FORM?
A. YES, SIR.
MR. HOOD: I WOULD LIKE TO OFFER IT IN EVIDENCE.
106.
MR. WHERRY: NO OBJECTION.
Q. (BY MR. HOOD, CONTINUING) AND YOU ALSO SIGNED A CONSENT TO HAVE RECORDS RELEASED. THIS ONE IS DATED DECEMBER 10, 1990. IS THIS YOUR SIGNATURE?
A. YES, SIR.

[LAVERNE SINGLETON 113]

MR. HOOD: I WOULD LIKE TO PUT THAT ONE INTO EVIDENCE.
MR. WHERRY: MAY I SEE IT PLEASE.
MR. HOOD: YES.
MR. HOOD: THIS IS PART OF 110.
DEPUTY CLERK: DEFENDANT'S EXHIBIT 110-A.
MR. WHERRY: NO OBJECTION.
Q. (BY MR. HOOD, CONTINUING) NOW, ON THE FIRST BABY, NOVEMBER OF '89, YOU HAD HAD COCAINE AS RECENTLY AS FOUR DAYS BEFORE YOU WENT IN AND HAD THAT BABY?
A. I DON'T REMEMBER. I MEAN, I DON'T KNOW HOW LONG IT WAS.
Q. IF THAT'S WHAT THEY WROTE DOWN IN YOUR MEDICAL RECORD YOU,

WOULDN'T QUESTION IT, WOULD YOU?
A. I DON'T UNDERSTAND YOUR QUESTION.
Q. WHEN YOU GOT TO THE HOSPITAL, IF THEY WROTE DOWN YOU HAD COCAINE FOUR DAYS BEFORE YOU HAD THAT BABY IN NOVEMBER OF '89, WOULD YOU SAY THAT THAT IS NOT TRUE?
A. I STILL CAN'T REMEMBER.
Q. YOU JUST DON'T REMEMBER. WOULD YOU HAVE REMEMBERED BETTER THEN WHEN YOU WENT IN TO GET TREATED THAN YOU REMEMBER NOW?
A. I CAN REMEMBER THINGS NOW.
Q. OKAY. DO YOU QUESTION THE CORRECTNESS OF ANY OF YOUR MEDICAL RECORDS ABOUT WHAT YOU TOLD THE HEALTH CARE PROVIDERS AND WHAT THEY WROTE DOWN ABOUT YOU?

[LAVERNE SINGLTON 114]

A. PUT THAT AGAIN?
Q. DO YOU QUESTION THE CORRECTNESS OF ANY OF THE MEDICAL RECORDS ABOUT YOU AND WHAT YOU TOLD THE HEALTH CARE PROVIDERS WHEN YOU WENT IN TO HAVE YOUR BABY?
A. NO, SIR.
Q. OKAY. WHEN YOU GOT INTO THE COCAINE WITH THIS NEXT CHILD, ARNOLD, DELIVERED IN NOVEMBER OF 1990, YOU SAID SOMETHING IN YOUR DEPOSITION ABOUT GETTING IN THE WRONG

ENVIRONMENT. WHAT WERE YOU TALKING ABOUT?
A. I WENT TO A BIRTHDAY PARTY.
Q. ALL RIGHT. AND THEY GAVE YOU COCAINE?
A. I WAS IN THE ROOM.
Q. I'M SORRY?
A. I WAS IN THE ROOM.
Q. WELL YOU HAD TO TAKE IT? YOU HAD TO GET IT IN YOUR BODY IN YOUR BLOOD SYSTEM TO GET IN THAT BABY, BECAUSE THE BABY TESTED WITH IT, TOO. DID YOU SNIFF IT, SNORT IT OR SMOKE IT?
A. SMOKED IT.
Q. THREE TIMES SUBSTANCE ABUSE, NOVEMBER OF '89, JUNE OF - DECEMBER OF '90?
MR. WHERRY: ASKED AND ANSWERED, YOUR HONOR.
Q. (BY MR. HOOD, CONTINUING) AND EACH TIME THAT SUBSTANCE ABUSE WAS AT THE MEDICAL UNIVERSITY, AND EACH TIME YOU AGREE THAT IT HELPED YOU?
A. NO, IT DIDN'T.

[LAVERNE SINGLETON 115]

Q. IT DIDN'T HELP YOU?
A. (WITNESS NODS HEAD.)
Q. ARE YOU STILL HAVING PROBLEMS?
A. YES.
Q. I'M SORRY. HAVE YOU GONE BACK TO SUBSTANCE ABUSE?
A. I'M RECOVERING.
Q. YOU WENT TO GROUP SESSIONS WITH COUNTY SUBSTANCE ABUSE, DID THAT HELP YOU?

A. NO.
Q. WELL, YOU KNEW WHAT YOU WERE DOING WAS ILLEGAL, DIDN'T YOU?
A. YES.
Q. AND YOU HAD BEEN THROUGH THIS TWICE AND YOU KNEW THAT IF YOU DIDN'T QUIT THEY COULD PUT YOU IN JAIL?
A. NO.
Q. YOU DIDN'T KNOW THAT? YOU STILL DON'T KNOW THAT?
A. YES.
Q. BUT IT'S YOUR POSITION THAT THE ONLY PERSON IN THE MAMA-PREGNANT-CHILD-FETUS FORMULA THAT HAS A VOICE IS THE MAMA; IS THAT RIGHT?
MR. WHERRY: OBJECTION. SHE DIDN'T SAY THAT. THAT'S INFLAMMATORY AND ARGUMENTATIVE.
THE COURT: I THINK IT'S ARGUMENTATIVE, AND I SUSTAIN THE OBJECTION.
MR. WHERRY: THANK YOU, SIR.

* * *

[LAVERNE SINGLETON 118]

MR. WHERRY: MAY I HAVE A MINUTE, YOUR HONOR.
NO OBJECTION.
Q. (BY MR. HOOD, CONTINUING) I ASKED YOU THIS A MINUTE AGO AND YOU SAID NO, AND THAT'S WHY I'M ASKING YOU AGAIN NOW. ON LINE 23 YOU WERE ASKED: SO TELL ME ABOUT YOUR SUBSTANCE ABUSE

TREATMENT AT MUSC IOP. THAT'S THE PSYCHIATRIC UNIT. WAS IT HELPFUL. WHAT DID YOU SAY UNDER OATH WITH YOUR LAWYER PRESENT IN YOUR DEPOSITION ON AUGUST THE 23RD, 1995?

A. YES.

Q. YOU SAID YES, DIDN'T YOU? YOUR ANSWER WAS YES, CORRECT?

A. YES.

Q. THANK YOU.

AND WHEN YOU WERE ASKED IN YOUR DEPOSITION ON PAGE 110, AT LINE 15 -

MR. WHERRY: MAY I HAVE A MOMENT, PLEASE, YOUR HONOR.

MR. WHERRY: NO OBJECTION.

(BY MR. HOOD, CONTINUING) YOU THEN WERE ASKED WHAT I ASKED YOU A MINUTE AGO ABOUT CHARLESTON COUNTY SUBSTANCE ABUSE WHERE YOU HAD COUNSELING. EARLIER TODAY I ASKED YOU IF IT WAS HELPFUL AND YOU SAID NO. ON LINE 15 YOU WERE ASKED, "DID YOU FIND THEIR SESSIONS HELPFUL?"

AND YOUR ANSWER?

A. "YES."

Q. HAVE YOU BEEN BACK TO SUBSTANCE ABUSE SINCE I TOOK YOUR

[LAVERNE SINGLETON 119]

- SINCE - SINCE CHRISTY TOOK YOUR DEPOSITION?

A. NO.

MR. HOOD: THAT'S ALL WE HAVE.

THE COURT: REDIRECT?

MR. WHERRY: NO SIR. THANK YOU, MS. SINGLETON, YOU MAY STEP DOWN.

(TESTIMONY OF LAVERNE SINGLETON COMPLETED.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF GERTHA WARING

[WARING 131]

A. THAT IS CORRECT.
Q. AND YOU PRIMARILY DEAL WITH?
A. CASES INVOLVING CHILDREN.
Q. WERE YOU INVOLVED WITH WHAT WE HAVE COME TO KNOW AS THE INTERAGENCY POLICY?
A. I AM - I WAS INVOLVED LATER ON. I WAS NOT INVOLVED WHEN THE POLICY WAS FORMULATED.
Q. HOW DID YOU BECOME INVOLVED IN THE POLICY?
A. I BECAME WHILE I WAS MADE AWARE WHEN LIEUTENANT ROBERTS AT THAT TIME, WHO LATER ON WAS A CAPTAIN. HE EXPLAIN TO ME THAT THIS POLICY HAD BEEN FORMULATED AND THAT I WOULD BE THE PRIMARY PERSON, CONTACT PERSON AT THE CHARLESTON POLICE DEPARTMENT WHENEVER THERE WAS CONTACT FROM THE MEDICAL UNIVERSITY REGARDING CHILDREN THAT WERE ABUSE OF SUBSTANCE PRENATAL.
Q. WERE YOU STATIONED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. NO, MA'AM.

Q. DID YOU MONITOR WHO WAS TESTED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. NO, MA'AM.
Q. DID YOU TELL ANY DOCTOR OR NURSE THERE TO TEST A PATIENT FOR DRUGS?
A. NO, MA'AM.
Q. COULD YOU EXPLAIN TO THE JURY IN GENERAL WHAT YOUR ROLE

[WARING 132]

WAS WHEN YOU RECEIVED A CALL FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. WHEN I RECEIVED A CALL FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN REFERENCE TO ONE OF THE LADIES THAT TESTED POSITIVE FOR COCAINE, I WOULD SCHEDULE A TIME I WOULD GO DOWN TO THE MEDICAL UNIVERSITY, WHERE I WOULD MEET WITH ONE OF THE OFFICIALS. I WOULD TAKE THE INFORMATION FOR A REPORT. AND BASED UPON THE INFORMATION THAT HAD BEEN PROVIDED TO ME - AND THAT INFORMATION I WOULD GET WOULD BE THINGS LIKE THE MOTHER'S NAME, DATE OF BIRTH. MAYBE A SOCIAL SECURITY NUMBER. TELEPHONE NUMBER AND THING OF THAT NATURE. BASED UPON THE INFORMATION THAT I WOULD RECEIVE, IN MY OPINION IT APPEARED TO BE SUFFICIENT TO MAKE A WARRANT-LESS ARREST. SOMETIMES - LOT

OF TIMES WHEN I WOULD BE CONTACTED SOME OF THE LADIES WERE READY FOR DISCHARGE, SO I WOULD GO AHEAD AND MAKE A WARRANT-LESS ARREST AT THAT POINT.

AFTER THE ARREST WAS MADE, THEN I WOULD - WELL, OF COURSE I WOULD CONTACT THE HOSPITAL OFFICIALS. I WOULD NOTIFY SECURITY AS WELL. I WOULD PROCEED TO THE - WOULD BE ESCORTED TO THE ROOM WHERE ONE OF THE NURSE OR SOMEONE WOULD NORMALLY GO IN AND HELP THE LADY TO BECOME DRESSED OR WHATEVER THEY DID. OKAY.

Q. JUST TALK SLOWLY, THAT'S ALL RIGHT.

A. I'M TERRIBLY SORRY.

ANYWAY, THEY WOULD ASSIST THE LADIES IN GETTING

[WARING 133]

DRESSED AND THING LIKE THAT. AFTER THAT TIME THE LADIES WOULD BE SERVED WITH A WARRANT. THEY WOULD ALWAYS BE A WHEELCHAIR ON THE OUTSIDE AND A SHEET AND THAT WAS TO COVER. WHEN THESE LADIES WERE PLACED UNDER ARREST OR THE WARRANTS WERE SERVED ON THEM. IMMEDIATELY AFTER THAT WAS DONE, THEY WERE -

Q. SLOW DOWN.

A. I'M SORRY.

Q. IMMEDIATELY AFTER THEY WERE -

A. AFTER THE WARRANT HAD BEEN SERVED ON THEM, OR IF THERE

WAS A WARRANT OR THEY WERE PLACED UNDER ARREST, THEY WOULD BE ADVISED OF THEIR CONSTITUTIONAL RIGHTS. AND I WOULD READ IT FROM A CARD ADVISING THEM OF THEIR CONSTITUTIONAL RIGHTS.

AFTER THAT TIME, THE LADIES, WHATEVER THEY BROUGHT WITH THEM, THERE WAS NORMALLY PILLOWS, THERE WERE SANITARY NAPKINS AND A LOT OF OTHER PERSONAL ITEMS THAT THE HOSPITAL WOULD GIVE THEM THAT WOULD BE, YOU KNOW, TAKEN THE - WITH THEIR PROPERTY.

ONCE THE RESTRAINTS WERE PLACED ON THESE LADIES, THEY WERE SEATED IN THE WHEELCHAIR. AND THAT WAS IN AN EFFORT TO CONCEAL THE RESTRAINTS. NOW, THE BELT THAT WAS USED, THERE WERE A NUMBER OF WAYS THAT IT COULD HAVE BEEN DONE, THE HANDCUFFS THAT IS. IT COULD HAVE BEEN PLACED BEHIND THEM LIKE THIS, OR THERE COULD HAVE BEEN A BELT, SO THAT IT WOULD BE MORE COMFORTABLE AND IT WOULD BE HELD IN FRONT. AND OF COURSE WHEN - IF THE CUFFS WERE IN BEHIND IT WOULD DRAW TOO MUCH

[WARING 134]

ATTENTION, AND THAT'S ONE OF THE LAST THINGS THAT WE WANTED.

SO THE BELT WAS USED SO THAT THE CUFFS WOULD BE IN FRONT AND

SO THAT THERE WOULD BE NO ATTENTION DRAWN TO THIS.

WHEN I WENT TO ARREST THESE LADIES I WAS ALWAYS IN PLAIN CLOTHES. I WAS IN AN UNMARKED POLICE CAR. AND I WAS PARKED ON THE SIDE STREET, IT WAS NOT THE MAIN ENTRANCE TO THE HOSPITAL. AND I BELIEVE IT WAS, I'M THINKING SABIN STREET. AFTER THEY WERE WHEELED OUT IN THE WHEELCHAIR, I WOULD PULL MY CAR RIGHT UP TO THE CURB. I WOULD HELP THEM INTO THE VEHICLE. AND NINE TIMES OUT OF TEN I WAS ALONE, SO THEY SAT UP FRONT WITH ME. AND WE WOULD PROCEED ON TO THE POLICE STATION. AND ON OUR WAY THERE WE WOULD HAVE A TALK. I KNEW THIS WAS NOT A PLEASANT SITUATION AND I MADE EVERY ATTEMPT TO MAKE IT COMFORTABLE FOR THESE LADIES. BY THE TIME WE ARRIVED AT THE POLICE STATION WE WERE NORMALLY LAUGHING AND TALKING ABOUT SIMILAR INTERESTS.

AND ONCE WE ARRIVED AT THE POLICE STATION, THEY WOULD GO IN THROUGH THE REAR ENTRANCE. MOST TIMES WE WOULD GET ON THE ELEVATOR. WE WOULD GO TO THE SECOND FLOOR. WHICH IS WHERE THE DETECTIVE'S OFFICE IS LOCATED. ONCE WE GOT THERE, THEY WOULD BE OFFERED TO MAKE COUNTLESS PHONE CALLS IF THEY WANTED. THEY WOULD ALWAYS BE OFFERED SOMETHING TO EAT

AND DRINK. THEN WE WOULD PROCEED TO A SMALLER OFFICE WHERE AGAIN THEY WOULD BE MIRANDIZED. AND IF THEY WANTED TO PROVIDE A STATEMENT THEN I WOULD - ASKED IF IT WOULD BE OKAY TO HAVE

[WARING 135]

IT TAPED. THEY WOULD ACKNOWLEDGE ONE WAY OR THE OTHER. AT THAT TIME I WOULD PLACE THE TAPE RECORDER ON THE TABLE. I WOULD MIRANDIZE AGAIN ON TAPE AND I WOULD TAKE THE INFORMATION THEY HAD TO OFFER.

Q. WHEN YOU TOOK THESE WOMEN OUT OF THE MEDICAL UNIVERSITY, WERE THEY CLOTHED?

A. YES, MA'AM.

Q. WERE THEY EVER EXPOSED?

A. NO, MA'AM. I CAN REMEMBER A COUPLE OF LADIES THAT MAY NOT HAVE WORN THEIR STREET CLOTHES, BUT WHAT HAPPENED IN THOSE CASES, THEY WOULD PUT ON A HOSPITAL GOWN THAT THEY WOULD PUT - ONE WAS PUT ON THE RIGHT WAY AND THEN ONE WAS PUT ON BACKWARD TO CONCEAL THEIR PERSON.

Q. DID YOU EVER REFUSE TO ALLOW ANY OF THE WOMEN TO PUT ON THEIR CLOTHES?

A. NO.

Q. IF THEY WERE AVAILABLE?

A. NO, MA'AM. I WOULDN'T DO THAT.

Q. DID YOU EVER REFUSE TO ALLOW THE WOMEN TO SEE THEIR FAMILIES BEFORE YOU ARRESTED THEM?

A. NO, MA'AM. IN FACT, I DON'T EVEN REMEMBER ANY FAMILY MEMBERS BEING THERE ANY OF THE TIME WHEN I TAKE ANY OF THE LADIES INTO CUSTODY.

Q. DID THE WOMEN, ONCE THEY WERE TAKEN TO THE POLICE STATION, HAVE ACCESS TO FEMININE SANITARY PADS IF THEY NEEDED

[WARING 136]

THEM?

A. OH, YES, MA'AM. ONCE THEY ARRIVED AT THE POLICE STATION, ONCE THEY HAD BEEN OFFERED SOMETHING TO EAT, SOMETHING TO DRINK, THEY MADE THEIR PHONE CALLS AND THINGS OF THAT NATURE, THE MATRON NORMALLY CAME DOWN TO ASSIST. AND THAT WOULD INCLUDE GOING BACK DOWN TO THE BOOKING AREA, THE MATRON NORMALLY MADE THE RECORD OF THE MATERIAL THAT WAS BROUGHT IN. THE MATRON WAS ALSO RESPONSIBLE FOR PROVIDING SANITARY NAPKIN. IF THEY NEEDED TO MAKE ADDITIONAL PHONE CALLS, BRING THE TELEPHONE RIGHT UP TO WHERE THEY WERE. SO, NO, MA'AM, WE ALWAYS KEEP A SUPPLY OF PERSONAL ITEMS FOR THESE LADIES THAT WOULD COME IN.

Q. WERE YOU INVOLVED IN THE ACTUAL ARRESTS OF SOME OF THE PLAINTIFFS IN THIS ACTION?

A. YES, I WAS.

Q. I HAVE GOING TO BRING YOU THE ORIGINAL ARREST RECORD.
AND LET'S GO THROUGH ONE BY ONE THE PLAINTIFFS' ARREST
RECORDS. STARTING WITH LORI GRIFFIN.
THE COURT: NOW THERE HAS BEEN AN OBJECTION, AS I
UNDERSTAND IT, TO THESE RECORDS.
MR. WHERRY: WELL, I DON'T KNOW WHAT IS GOING TO BE
DONE. WHAT I WAS GOING TO ASK IS THAT THE SAME RULES BE
APPLIED TO MS. SHOWERS, THAT IF THEY'RE IN EVIDENCE THEY CAN
BE PUBLISHED TO THE JURY AT SOME OTHER TIME RATHER THAN HAVE
THIS WITNESS SIT AND READ FROM THEM. I - THERE ARE

* * *

[WARING 143]

DO YOU RECALL OR WERE YOU INVOLVED IN THE ARREST OF
THE PLAINTIFF LORI GRIFFIN?
A. YES, I WAS.
Q. CAN YOU TELL THE JURY WHAT YOU REMEMBER ABOUT THAT
ARREST?
A. WHEN MS. GRIFFIN WAS ARRESTED, SHE WAS ARRESTED AT THE
MEDICAL UNIVERSITY. WHEN SHE WAS ARRESTED AFTER HAVING BEEN
SERVED WITH A WARRANT, THE PROCEDURE THAT I EXPLAIN EARLIER,
SHE WAS PLACED IN A WHEELCHAIR WITH RESTRAINTS AND HER
PROPERTY WAS COMING BY HER. WE WERE ESCORTED OUT OF THE

HOSPITAL.
Q. LET ME ASK YOU, DETECTIVE, THE RESTRAINTS THAT YOU APPLIED FOR MS. GRIFFIN?
A. YES.
Q. WHY DO YOU APPLY RESTRAINTS?
A. WELL, FOR NUMEROUS REASONS. WELL, FOR ONE IT WAS THE POLICY OF THE DEPARTMENT. RESTRAINTS ARE USED ON EVERYONE WHETHER IT BE A PUBLIC PERSON WITH A PETTY LARCENY OR ANYBODY. ANOTHER REASON, I WAS IN PLAIN CLOTHES WITH AN UNMARKED POLICE CAR. NORMALLY WHEN I AM TRANSPORTING SOMEONE THAT SOMEONE SITS RIGHT UP FRONT WITH ME. THERE ARE NO CAGES IN THIS VEHICLE. SO IT WAS FOR HER PROTECTION AND MINE AS WELL.
Q. GO AHEAD TELL THE JURY WHAT ELSE YOU REMEMBER ABOUT THAT ARREST?

[WARING 144]

A. WHEN MS. GRIFFIN WAS ARRESTED, AND MIND YOU I WAS PREGNANT DURING THAT SAME TIME ALSO, SHE WAS TAKEN OUT IN A WHEELCHAIR. WE WERE ESCORTED TO THE SABIN STREET EXIT, WHICH WAS THE AREA THAT WAS NOT THE MAIN ENTRANCE TO THE HOSPITAL. ONCE SHE GOT TO THE DOORWAY, I WOULD PULL MY POLICE CAR RIGHT UP TO THE CURB. I WOULD WHEEL HER AROUND. I WOULD OPEN THE

DOOR FOR HER. ALLOW HER TO GET INSIDE. AND AFTER THAT WAS DONE WE PROCEED ONTO THE HOSPITAL. EXCUSE ME, TO THE CHARLESTON POLICE DEPARTMENT.

Q. AND AT ANYTIME WERE THE HANDCUFFS VISIBLE ON MS. GRIFFIN?

A. NO, MA'AM. THEY WERE COVERED WITH THE SHEET. THAT AND THE RESTRAINTS, THE SHACKLES.

Q. AT ANY TIME WAS MS. GRIFFIN EXPOSED - EXPOSED OR NOT FULLY CLOTHED?

A. NO, MA'AM. NO, MA'AM.

Q. AND CAN YOU DESCRIBE WHAT HAPPENED ONCE YOU GOT TO THE POLICE STATION, IF YOU RECALL?

A. ONCE WE ARRIVE AT THE POLICE STATION, WE WENT TO A SMALLER OFFICE AREA, WHICH WAS NEAR THE DETECTIVE'S OFFICE, WHERE SHE WAS ALLOWED TO MAKE AS MANY PHONE CALLS AS SHE WANTED. SHE HAD BEEN OFFERED SOMETHING TO EAT OR DRINK EARLY ON, BUT THROUGHOUT THIS IS WHAT I ALWAYS DO.

I ASKED IF SHE WANTED TO MADE A STATEMENT TO ME REGARDING THE OFFENSE WHICH SHE HAD BEEN CHARGED. AT WHICH TIME WE PROCEEDED TO A SMALLER OFFICE AREA. AND EVEN SO I

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[WARING 152]

Q. (BY MS. SHOWERS, CONTINUING) DETECTIVE, COULD YOU READ

YOUR INCIDENT REPORT DATE AND TELL THE JURY WHAT THE DATE IS?
A. OKAY. I CANNOT MAKE THE DATE OUT ON THIS.
Q. GO AHEAD AND READ IT.
A. I CAN'T READ THE DATE. COMPLAINANT STATES THAT ON NOVEMBER 9TH, 1989, SUBJECT LAVERNE SINGLETON - LAVERNE SINGLETON?
Q. THAT'S RIGHT. I SEEM TO HAVE THE ONLY LEGIBLE COPY. MAKE SURE THAT'S WHAT IT IS.
A. SUBJECT -
Q. GO AHEAD AND TALK INTO THE MICROPHONE.
A. COMPLAINANT STATES THAT ON NOVEMBER 9TH, 1989, SUBJECT LAVERNE SINGLETON, BLACK FEMALE, DATE OF BIRTH 3/1 OF '57 OF 5596 DIXIE PLANTATION ROAD, MEGGETT, SOUTH CAROLINA, WAS ADMITTED INTO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA AT 171 ASHLEY AVENUE IN REFERENCE TO BEING IN PRE-TERM LABOR. SUBJECT WAS THIRTY-ONE WEEKS PREGNANT. SHORTLY AFTER ADMITTANCE AT APPROXIMATELY 10:52 A.M. SUBJECT SINGLETON GAVE BIRTH TO A FOUR POUND EIGHT OUNCE BABY BOY. IMMEDIATELY AFTER SUBJECT SINGLETON GAVE BIRTH, A URINE TEST WAS PERFORMED ON SINGLETON'S URINE BY MUSC LAB TECHNICIANS, WHICH NOT ONLY TESTED POSITIVE FOR SUBSTANCE CANNABIS COMMONLY FOUND IN

MARIJUANA, BUT ALSO TESTED POSITIVE FOR COCAINE. SINGLETON'S CURRENTLY ASSIGNED TO ROOM, AND THAT PART IS, I CAN'T SEE IT, AT MUSC. IS SCHEDULED TO BE DISCHARGE ON NOVEMBER 10, 1989.

[WARING 153]

AN ARREST WARRANT FOR THE OFFENSE OF UNLAWFUL NEGLECT OF A CHILD OR HELPLESS PERSON BY LEGAL CUSTODIAN VIOLATION OF SECTION 20-750 WILL BE OBTAINED FOR SUBJECT SINGLETON AND EXECUTED UPON DISCHARGE FROM HOSPITAL.

Q. DID YOU ISSUE A SUPPLEMENTAL REPORT AS WELL, DETECTIVE?

A. YES.

Q. I HAVE A LEGIBLE COPY, IF THAT HELPS.

A. THANK YOU.

Q. COULD YOU PLEASE READ THAT TO THE JURY.

A. THIS IS DATED NOVEMBER 10 OF 1989. ON NOVEMBER 10TH, 1989, AN ARREST WARRANT WAS OBTAINED FOR SUBJECT LAVERNE SINGLETON FOR THE OFFENSE OF UNLAWFUL NEGLECT FOR A CHILD OR HELPLESS PERSON BY LEGAL CUSTODIAN. HMM. VIOLATION SECTION 20-750. ON THIS SAME DATE SUBJECT WAS CHARGED WITH SAID OFFENSE, MIRANDIZED AND TRANSPORTED TO CPD, WHICH IS CHARLESTON POLICE DEPARTMENT WHERE SHE WAS LODGED. SUBJECT

WAS AGAIN ADVISED OF HER CONSTITUTIONAL RIGHTS AND DID WISH TO PROVIDE REPORTING OFFICER WITH A TAPED STATEMENT ADMITTING THE USE OF MARIJUANA AND COCAINE WHILE PREGNANT. TAPE TO BE TRANSCRIBED.

Q. AND DID YOU SIGN THAT REPORT, DETECTIVE?

A. YES, MA'AM, I DID.

Q. AND EARLIER YOU TESTIFIED THAT YOU TOOK MS. SINGLETON TO A FAST FOOD RESTAURANT?

A. YES, MA'AM.

[WARING 154]

Q. AND TELL ME WHY YOU DID THAT?

A. BECAUSE SHE SAID THAT SHE WAS HUNGRY AND IT WAS ON THE WAY TO THE STATION. AND NORMALLY IF SOMEONE SAYS THAT, I ALWAYS OFFER SOMETHING TO EAT AND DRINK. AND IF IT'S NOT DONE IN THAT WAY, THEN I WOULD ORDER SOMETHING FROM THE MATRON SO THEY WOULD HAVE IT.

Q. DO YOU RECALL WHETHER MS. SINGLETON WAS COMPLETELY COVERED WITH CLOTHING?

A. YES, MA'AM.

Q. WAS SHE?

A. SHE WAS COMPLETELY - ALL OF THE LADIES. I DIDN'T TAKE THEM AWAY FROM THE HOSPITAL. AND AS I EXPLAIN EARLIER, IF IT WAS ONE OF THE GOWNS, THEN TWO WAS PUT ON, ONE WAS PUT ON THE RIGHT WAY AND THE OTHER BACKWARDS.

Q. WERE YOU INVOLVED IN THE ARREST OF THE PLAINTIFF ELLEN KNIGHT?
A. YES, MA'AM.
Q. DO YOU RECALL THAT?
A. YES, MA'AM.
Q. CAN YOU TELL THE JURY WHAT YOU RECALL ABOUT MS. KNIGHT'S ARREST?
A. WITH MS. KNIGHT, I WAS SUMMONED TO THE MEDICAL UNIVERSITY REGARDING AN INDIVIDUAL THAT HAD BEEN IN PRE-TERM LABOR. UPON ARRIVAL - AND I'LL NEED TO REVIEW FOR SPECIFICS ON THAT.
Q. JUST FOR NOW, TELL THE JURY WHAT YOU RECALL.

* * *

[WARING 157]

HAD A COPY. AND YOU SAID THAT YOU DID. AND I SAID AS SHE PUBLISHES IF THERE IS SOMETHING IN THERE THAT IS OBJECTIONABLE, PLEASE BRING IT TO MY ATTENTION. THE GENERAL ABILITY TO READ IT, YOU KNOW, IS SHE CAN PUBLISH IT. AND SINCE SHE WROTE IT SHE CAN DO IT.

MS. SHOWERS: THANK YOU.

THE COURT: LADIES AND GENTLEMEN, I SAID SEVERAL TIMES THAT THE HEALTH OF THE BABIES THAT ARE BORN TO THESE PLAINTIFFS IS NOT RELEVANT IN THIS CASE, WHETHER IT'S GOOD OR WHETHER IT'S BAD. AND ON A NUMBER OF OCCASIONS SOMETHING HAS

COME IN ABOUT THEIR HEALTH. AND I TRIED TO TELL YOU TO DISREGARD IT. THERE HAVE BEEN SOME QUESTIONS ASKED BY THE LAWYERS THAT SEEM TO SUGGEST THAT THE BABIES ARE HEALTHY OR NOT HEALTHY. AND TESTIMONY BY SOME WITNESSES THAT DO LIKEWISE. BUT, AGAIN, JUST LET ME SAY THAT IF THIS WITNESS HAS SAID ANYTHING ABOUT THE HEALTH OF THESE BABIES, AND I THINK SHE MAYBE DID READ SOMETHING ABOUT IT, DISREGARD IT. THE HEALTH OF THESE BABIES IS NOT RELEVANT IN THIS CASE AND YOU CANNOT SPECULATE WHETHER THEY WERE HEALTHY OR WHETHER THE COCAINE THAT THEIR MOTHERS MAY HAVE BEEN USING CAUSED INJURY TO THEM. THAT'S JUST NOT RELEVANT TO THIS CASE, SO DISREGARD IT.

Q. (BY MS. SHOWERS, CONTINUING) DETECTIVE, I'M GOING TO ASK YOU TO RELY ON YOUR MEMORY OF MS. KNIGHT'S ARREST?

A. YES.

[WARING 158]

Q. DO YOU RECALL THAT MS. KNIGHT WAS FULLY CLOTHED WHEN SHE WAS ARRESTED?

A. YES, I DO.

Q. AND WAS SHE PROVIDED WITH ALL OF THE SUPPLIES THAT SHE NEEDED TO HANDLE THE BLEEDING THAT SHE HAD POSTPARTUM?

MR. WHERRY: OBJECTION, LEADING.
THE COURT: I THINK THE QUESTION IS LEADING AND I SUSTAIN THE OBJECTION.
MS. SHOWERS: WELL, YOUR HONOR, SHE STATED THAT SHE WAS BLEEDING HEAVILY. THE ONLY WAY TO GET THE DETECTIVE TO RESPOND TO THAT IS TO TELL HER THAT AND ASK HER IF SHE RECALLS THAT.
THE COURT: I THINK THERE ARE OTHER WAYS TO DO IT.
Q. (BY MS. SHOWERS, CONTINUING) DETECTIVE, DID -
THE COURT: I MEAN, YOU CAN -
Q. (BY MS. SHOWERS, CONTINUING) DID THE WOMEN EVER NOT HAVE THE SUPPLIES THEY NEEDED?
A. WHEN ALL OF THESE LADIES THAT I WAS INVOLVED WITH WOULD LEAVE THE HOSPITAL, THEY WOULD HAVE AMPLE SUPPLY OF SANITARY NAPKINS, THE VERY LONG ONES. IN ADDITION TO THAT SOME OF THE LADIES WOULD EVEN TAKE THEIR PILLOWS AND LOTION AND OTHER THINGS LIKE THAT. ONCE THEY ARRIVED AT THE POLICE STATION, THE PROPERTY WAS REMOVED, BUT THE CITY OF CHARLESTON KEEP AN AMPLE SUPPLY OF THESE ITEMS. AND EVEN IF THEY DIDN'T USE THEIRS, THE CITY MATRON WOULD PROVIDE IT FOR THEM.

[WARING 159]

Q. AND IN MS. KNIGHT'S CASE DID SHE HAVE THOSE SUPPLIES?
A. YES.
Q. WERE YOU INVOLVED WITH THE ARREST OF MS. POWELL?
A. WHAT IS THE NAME?
Q. SANDRA POWELL?
A. I DID NOT MAKE THE ACTUAL PHYSICAL ARREST ON MS. POWELL.
Q. HOW ABOUT MS. CRYSTAL FERGUSON?
A. YES.
Q. TELL THE JURY FROM YOUR MEMORY WHAT YOU RECALL ABOUT MS. FERGUSON'S ARREST?
A. IF I REMEMBER CORRECTLY, I BELIEVE MS. FERGUSON CAME INTO THE POLICE STATION. I BELIEVE THAT SHE SURRENDERED HERSELF. AFTER THAT WAS DONE, SHE WAS BOOKED IN AT THE BOOKING DESK. SHE WAS OFFERED SOMETHING TO EAT AND DRINK. SHE WAS ALLOWED TO MAKE COUNTLESS PHONE CALLS. AND GOING FROM MEMORY, I DON'T RECOLLECT WHETHER SHE PROVIDED A STATEMENT OR NOT. I DO REMEMBER HAVING A CONVERSATION WITH MS. FERGUSON TO THE EFFECT WE TALKED ABOUT HER CHILDREN. I BELIEVE THAT SHE SAID THEY WENT TO PARK CIRCLE ELEMENTARY SCHOOL. SHE TALKED ABOUT HAVING SOMEONE WATCH THEM WHILE SHE WAS TAKING CARE OF THIS MATTER. I DON'T REMEMBER SPECIFICALLY HOW MANY CHILDREN SHE SAID THAT SHE HAD. BUT, AGAIN, THIS WAS LOW KEY. SHE WAS

VERY FRIENDLY. ALL OF THE LADIES WAS FRIENDLY, BUT I WAS NEVER MEAN TO THEM, EITHER.

Q. AND MS. WILLIAMS, WERE YOU INVOLVED IN MS. WILLIAMS'

[WARING 160]

ARREST?

A. MAY I CHECK THE BOOKING REPORT FOR A MINUTE.

YES, I WAS.

Q. TELL THE JURY FROM YOUR MEMORY WHAT YOU RECALL ABOUT MS. WILLIAMS' ARREST?

A. MS. WILLIAMS WAS ARRESTED AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. AFTER THAT TIME SHE WAS TRANSPORTED TO THE CHARLESTON POLICE.

Q. INTO THE MICROPHONE.

A. CHARLESTON POLICE DEPARTMENT. I'M SORRY. SHE WAS TRANSPORTED TO THE CHARLESTON POLICE DEPARTMENT. SHE WAS OFFERED THE USE OF A TELEPHONE. SHE WAS OFFERED SOMETHING TO EAT AND DRINK. SHE WAS FULLY CLOTHED. SHE WAS ALLOWED TO GIVE ME A STATEMENT AFTER MIRANDA HAD BEEN DONE, BOTH AT THE HOSPITAL, ON THE WAY FROM THE HOSPITAL AND AGAIN AT THE POLICE STATION AND ON TAPE. AFTER THIS TIME, THE REGULAR PROCESSING WENT ON IN TERMS OF THE FINGERPRINTING, THE PHOTOGRAPHING, WHICH IS A STANDARD.

Q. WHEN YOU REMOVED MS. WILLIAMS FROM THE HOSPITAL, WERE HER HANDS COVERED AND THE SHACKLES COVERED?
A. YES, MA'AM.
Q. AND DID SHE HAVE IN HER POSSESSION THE SUPPLIES THAT YOU HAVE DESCRIBED AS FAR AS SANITARY NAPKINS AND KITS THAT WERE REQUIRED?
A. YES, MA'AM, SHE DID.

[WARING 161]

Q. WERE YOU INVOLVED IN THE ARREST OF MS. PAMELA PEAR?
A. MAY I BRIEFLY LOOK AT IT?
I DID SECURE AN ARREST WARRANT FOR MS. PAMELA PEAR.
Q. TELL THE JURY WHAT YOU RECALL ABOUT MS. PEAR'S ARREST?
WERE YOU PRESENT FOR THE ACTUAL ARREST?
A. I'M TRYING TO REVIEW THAT. I WROTE THE INITIAL POLICE REPORT AFTER HAVING RECEIVED THE INFORMATION FROM THE COMPLAINANT. I DID SIGN AN ARREST WARRANT FOR HER ARREST. I WAS PRESENT. HER PROPERTY, HOWEVER, WAS REMOVED BY MS. MONTGOMERY, WHO IS ONE OF THE MATRONS AT THE POLICE STATION.
Q. TO YOUR RECOLLECTION, WAS MS. PEAR CLOTHED WHEN SHE WAS ARRESTED?
A. YES, SHE WAS.
Q. AND MS. PEAR TESTIFIED THAT THE JAIL WAS DIRTY AND

SMELLED BAD. IN YOUR OPINION WAS THE JAIL DIRTY AND SMELL BAD?

A. NO, MA'AM. NO, MA'AM.

Q. WERE YOU INVOLVED IN THE ARREST OF MS. THERESA JOSEPH?

A. YES, I WAS.

Q. TELL THE JURY WHAT YOU RECALL ABOUT MS. JOSEPH'S ARREST?

A. WELL WITH MS. JOSEPH'S ARREST WE WERE ABLE, I THINK, TO SPEAK - SHE SPOKE WITH ME MORE THAN ANY OF THE OTHER LADIES DID. SHE WAS VERY OPEN. SHE TALKED ABOUT HERSELF A LOT. SHE WAS FULLY CLOTHED. SHE WAS WEARING THE SAME CLOTHING THAT SHE HAD WORN TO THE HOSPITAL, BLUE JEANS AND A TOP OF SOME KIND.

[WARING 162]

I DON'T REMEMBER THE TOP.

WITH MS. JOSEPH, AGAIN SHE WAS SUPPLIED THE GENERAL SUPPLY THAT WAS TO BE GIVEN AT THE HOSPITAL, WHICH INCLUDED THE SANITARY NAPKIN, PILLOW AND LOTIONS, THINGS OF THAT NATURE. MS. JOSEPH WAS PUT IN THE WHEELCHAIR. SHE WAS COVERED BY A SHEET THAT WAS SUPPLY BY THE HOSPITAL. SHE DID WEAR RESTRAINTS.

NOW WITH MS. JOSEPH I BELIEVE THAT SHE SAID THAT SHE HAD A CESARIAN SECTION. SHE NEVER COMPLAINED OF PAIN. AND AS

I STATED, ALTHOUGH SHE WORE A - THE BACK FOR THE RESTRAINTS, THEY WERE VERY LOOSE. IN FACT IF I MAY DEMONSTRATE HOW LOOSE THEY WERE. CAN I?

Q. SURE?

A. UH-HUH. WHEN THESE LADIES WORE THE BELT, THEY WORE THE RESTRAINTS WERE LIKE THIS. THE BELT WERE SO.

Q. COME STEP DOWN HERE IN FRONT OF THE JURY SO THEY CAN SEE WHAT YOU'RE DOING?

A. THE CUFFS WERE RIGHT HERE.

Q. COME RIGHT HERE.

A. RIGHT HERE. I'M SORRY. THE BELTS WERE AROUND AND THEY BUCKLED IN BACK. THE CUFFS WENT THROUGH THE BELT AND IT WAS LIKE THIS, SO THEY WOULDN'T HAVE TO PULL THE - PUT THE EXTRA STRAP ON THEM. THE BELTS WERE SO LOOSE THAT IT OFTEN CAME DOWN HERE, BECAUSE I REMEMBER HAVING TO PULL IT UP BECAUSE IT WAS THAT LOOSE. SO ALTHOUGH SHE HAD CESARIAN SECTION, IT WAS

[WARING 163]

NOT ALL TIGHT AROUND HER. AND THIS WAS WITH ALL OF THE LADIES.

Q. THANK YOU. WERE YOU INVOLVED IN THE ARREST OF PAULA HALE?

A. LET ME CHECK AGAIN. YES, I WAS.

Q. CAN YOU TELL THE JURY WHAT YOU RECALL ABOUT MS. HALE'S

ARREST?
A. WITH MS. HALE I DID PLACE HER UNDER ARREST CHARGING -
MR. WHERRY: YOUR HONOR, THE WITNESS IS READING.
THE QUESTION IS: WHAT DO YOU RECALL? AND HER HEAD IS DOWN WITH THESE LAST DOCUMENTS.
THE COURT: SHE UNDERSTANDS THAT.
THE WITNESS: CERTAINLY.
A. SHE WAS PLACED UNDER ARREST WHILE AT THE MEDICAL UNIVERSITY AND SHE WAS CHARGED WITH DISTRIBUTION OF A PERSON UNDER 18. SHE WAS TAKEN OUT IN A WHEELCHAIR BECAUSE ALL - THIS WAS A STANDARD. WE DID THIS WITH EVERYONE. SHE WAS ADVISED OF HER CONSTITUTIONAL RIGHTS. SHE WAS REMOVED FROM THE HOSPITAL IN A WHEELCHAIR WITH RESTRAINTS ON. HOWEVER, SHE DID HAVE A SHEET COVERING BOTH HER HAND AND HER FEET. SHE WAS TAKEN IN A WHEELCHAIR OUT TO THE CURB. MY CAR WAS PULLED UP THAT LOCATION. SHE WAS HELPED INTO THE POLICE CAR. SHE SAT UP FRONT WITH ME. ONCE THAT HAPPENED, WE PROCEEDED ON TO THE POLICE STATION WHERE ONCE UPON ARRIVAL WE WENT TO THE DETECTIVE'S OFFICE. SHE WAS OFFERED USE OF THE TELEPHONE.

SHE WAS OFFERED SOMETHING TO EAT AND DRINK. AND SHE WAS ASKED THAT SHE WOULD PROVIDE A STATEMENT TO ME REGARDING THIS.

Q. NOW, DETECTIVE, YOU SAID EARLIER THAT YOU WERE PREGNANT DURING THIS TIME PERIOD BETWEEN 1989 AND 1994; IS THAT CORRECT?

A. YES, MA'AM.

Q. AND DURING THAT TIME PERIOD DID YOU YOURSELF EXPERIENCE ANY COMPLICATIONS IN PREGNANCY?

A. YES, MA'AM. I WAS - I HAD HIGH-RISK PREGNANCY.

MR. WHERRY: OBJECTION, YOUR HONOR, THIS IS NOT THE LEAST BIT RELEVANT.

MS. SHOWERS: YOUR HONOR, I WOULD BE HAPPY TO TELL THE COURT WHY.

THE COURT: SURE. I DON'T UNDERSTAND ITS RELEVANCE.

MS. SHOWERS: THERE IS A CONTENTION THAT THE ONLY HOSPITAL TESTING PREGNANT WOMEN FOR DRUGS IS THE MEDICAL UNIVERSITY. AND THIS WOMAN WAS TESTED AT ANOTHER PRIVATE HOSPITAL FOR DRUGS, BECAUSE SHE HAD EXPERIENCED THE SAME TYPES OF COMPLICATIONS.

THE COURT: OKAY. I THINK THAT MAKES IT RELEVANT.

Q. (BY MS. SHOWERS, CONTINUING) GO AHEAD.

A. YES, MA'AM. I WAS PREGNANT AT THE TIME AND I DID HAVE A

HIGH-RISK PREGNANCY.
Q. AND WHERE DID YOU GO FOR TREATMENT?

[WARING 165]

A. I WENT TO ROPER. ROPER HOSPITAL IS WHERE I WENT.
Q. AND WHAT KIND OF COMPLICATIONS WAS IT?
A. WELL, I WAS IN PRE-TERM LABOR TWICE. I WAS HOSPITALIZED TWICE. AND WHILE I WAS THERE AT THE HOSPITAL I WAS ASKED ARE YOU USING NOT ONLY ILLEGAL SUBSTANCE, BUT ANY PILLS WHATSOEVER. I SAID NO. THE OFFICIALS THERE AT THE HOSPITAL ASKED ME IF I - WOULD I MIND TO SUBMITTING TO A URINE AND A BLOOD TEST TO DETERMINE WHAT HAD CAUSED ME TO GO INTO PRE-TERM LABOR. AND OF COURSE I SAID TAKE ALL THE BLOOD YOU NEED, BECAUSE I WANTED TO FIND OUT ALSO. AND THEY DID. THEY WERE UNABLE TO DETERMINE THE CAUSE OF MY PRE-TERM LABOR. AND THANKFULLY I WAS ABLE TO CARRY THE CHILD TO FULL TERM.
Q. AND THIS IS AT WHICH HOSPITAL?
A. ROPER HOSPITAL.
Q. THANK YOU, DETECTIVE. WHEN YOU CARRIED OUT THE ARREST AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, WHO ELSE WAS PRESENT FOR THE ARRESTS, THAT YOU RECALL?
A. WELL, ADMINISTRATIVE INDIVIDUAL FROM THE HOSPITAL WAS

ALWAYS THERE. I ALWAYS CONTACTED SECURITY THERE AT THE HOSPITAL UPON ENTERING. NURSES WERE ALWAYS PRESENT TO ASSIST THESE LADIES IN GETTING DRESSED AND THINGS LIKE THAT. I BELIEVE SOMEONE FROM THE LEGAL DIVISION WAS ALSO PRESENT.

Q. DID YOU HAVE CONTACT WITH SHIRLEY BROWN DURING ANY OF THE ARRESTS?

A. YES, I DID.

* * *

[WARING 200]

HEARING.

Q. I THINK YOU JUST SAID TO ME, AND I DON'T MEAN TO BE DIFFICULT, I THINK YOU JUST SAID TO ME THAT YOU WERE NOT PROVIDED WITH THE RESULTS OF URINE DRUG SCREENS TO WOMEN?

A. NO, SIR. YOU ASKED ME IF SHE GIVE ME A COPY OF A WRITTEN DOCUMENT. AND I TOLD YOU THAT SHE -- THE INFORMATION THAT WAS PROVIDED WAS VERBAL. IT INDICATED THE CONDITION OR WHAT TERMS OR WHAT CAUSED ME TO INITIATE MY INVESTIGATION.

Q. THAT WAS PROBABLY MY FAULT BECAUSE OF MY QUESTION. I THOUGHT MY QUESTION WAS: WERE YOU GIVEN THE RESULTS OF URINE DRUG SCREENS? SO WHETHER ORAL OR WRITTEN OR SOME OTHER FORM, THE ANSWER TO THAT QUESTION IS YES?

A. I'M SORRY.

Q. YES?
A. YES, SIR.
Q. AND QUALIFIED BY YOU THAT IT MIGHT HAVE BEEN ORAL?
A. I MAY HAVE MISUNDERSTOOD YOU.
Q. IT MAY HAVE BEEN MY FAULT.
BUT IN ANY EVENT, THE RESULTS OF THE URINE DRUG SCREENS WERE PROVIDED TO YOU BY SHIRLEY BROWN?
A. YES.
Q. ON THESE TEN CASES?
A. ON THESE TEN CASES, YES.
MR. WHERRY: MAY I HAVE JUST A MOMENT, PLEASE, YOUR HONOR.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF MARTHA WILLIAMS

[M. WILLIAMS 123]

(12-9-96.)

MS. DUNN: CALL MARTHA WILLIAMS.

- - -

MARTHA JANE COOPER WILLIAMS, PLF. WITNESS, SWORN.

DIRECT EXAMINATION

BY MS. DUNN:

Q. WOULD YOUR SIC STATE YOUR FULL NAME FOR THE COURT, PLEASE.

A. MARTHA JANE COPPER WILLIAMS.

Q. WHERE DO YOU LIVE?

A. I LIVE IN COLUMBIA.

Q. AND WHAT DO YOU DO THERE?

A. I WORK FOR THE STATE DEPARTMENT OF SOCIAL SERVICES. AND I AM IN THE STAFF DEVELOPMENT AND TRAINING DIVISION. I'M AN INSTRUCTOR THERE. AND I TEACH CLINICAL ELECTIVES AS WELL AS CLINICAL PORTIONS OF THE CHILD WELFARE CERTIFICATION PROGRAM AND THE ENTIRE PROGRAM, IF NEEDED.

Q. AND IN WHAT PROFESSION ARE YOU EDUCATED?

A. I'M A MASTER OF SOCIAL WORKER, M.S.W., CLINICAL SOCIAL WORKER.

Q. AS A SOCIAL WORKER, DID YOU WORK AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA AT A TIME IN THE PAST?
A. YES, I DID.
Q. WHEN DID YOU WORK THERE?
A. UMM, FROM JANUARY OF 1988 UNTIL THE FALL OF '91.
Q. AND WHEN YOU WENT IN JANUARY OF 1988, WHAT WERE YOU HIRED

[M. WILLIAMS 124]

TO DO?
A. AT THAT TIME I WAS -- I WAS AN INTERN WITH THE GRADUATE SCHOOL OF SOCIAL WORK AND THE MEDICAL UNIVERSITY OF SOUTH CAROLINA.
Q. IN THE BEGINNING OF 1988?
A. UMM-HMM.
Q. WHAT WERE YOUR JOBS? WHAT WAS YOUR JOB?
A. IN THE SPRING OF 1988 I WAS HIRED BY THE MEDICAL UNIVERSITY OF SOUTH CAROLINA AS A CLINICAL SOCIAL WORKER IN WORKING WITH ADULT PATIENTS FOR A PERIOD OF TIME. WHEN I DID MY INTERNSHIP, MY INTERNSHIP WAS WITH THE OB DIVISION.
Q. AND WHEN WAS THAT INTERNSHIP AGAIN?
A. THE INTERNSHIP WAS IN JANUARY UNTIL APPROXIMATELY MAY.
Q. AND MAY IS THEN WHEN YOU WERE HIRED?
A. RIGHT. I WAS HIRED IN MAY. AND I WORKED ON THE ADULT

SIDE. INPATIENT ONCOLOGY, AMONG OTHER SERVICES. SURGERY SERVICES.

Q. ARE YOU FAMILIAR WITH WHAT HAS BEEN REFERRED TO AS THE INTERAGENCY POLICY?

A. YES, I AM FAMILIAR WITH THAT.

Q. WERE YOU FAMILIAR WITH IT IN THE MONTHS BEFORE IT WAS ACTUALLY DEVELOPED IN THE SUMMER OF 1989?

A. YES, I WAS.

Q. DID YOU ATTEND ANY MEETINGS WHERE THE DEVELOPMENT OF THAT POLICY WAS DISCUSSED?

[M. WILLIAMS 125]

A. YES, I DID.

Q. CAN YOU DESCRIBE THOSE MEETINGS IN TERMS OF WHEN, WHERE, THAT SORT OF THING?

A. THE MEETINGS -- I CAN'T TELL YOU EXACT DATES. OR THE EXACT MEETING ROOM. BUT THERE WERE SEVERAL SUCH MEETINGS. AND IN THOSE MEETINGS THERE WAS A DISCUSSION OF WHAT THE MEDICAL UNIVERSITY WAS GOING TO DO IN RESPONSE TO, AS SHIRLEY BROWN PUT IT, A PERCEIVED EPIDEMIC AMONG PREGNANT BLACK WOMEN OF COCAINE ABUSE OR ADDICTION.

Q. AND WHO WAS AT THAT MEETING?

A. THERE WAS A ROTATION OF PEOPLE, BUT THE PEOPLE THAT I REMEMBER BEST WERE DR. NEWMAN, DR. HORGER, DR. SHAW. SHIRLEY

BROWN WAS IN ALL OF THE MEETINGS THAT I WAS IN.

Q. HOW MANY MEETINGS WERE YOU IN IN THE -- IN THE SUMMER OF 1989?

A. AT THIS POINT I WOULD HAVE TO GUESS, BUT MY BEST GUESSTIMATE IS ABOUT FOUR OR FIVE.

THE COURT: OKAY.

OKAY. GO AHEAD.

Q. DID YOU -- YOU SAID THAT YOU WERE INVOLVED IN MEETINGS CONCERNING THE INTERAGENCY POLICY IN THE SUMMER OF 1989. DID YOU HAVE ANY OTHER INVOLVEMENT IN THE DESIGN OF THE INTERAGENCY POLICY?

A. WELL, CAN YOU HEAR --

Q. PULL IT UP CLOSER TO YOU.

[P. WILLIAMS 126]

A. OKAY. I WAS INVOLVED IN A COMMITTEE OVER THE SUBSTANCE ABUSE COMMISSION IN MAKING PROPOSALS TOWARD AN IN-HOUSE ASSESSMENT TREATMENT, REFERRAL-TYPE PROGRAM IN CONJUNCTION WITH THE COMMISSION FOR WOMEN, BASED ON DR. CHASNOFF'S ILLINOIS MODEL.

Q. AND CAN YOU TELL US WHAT -- YOU USED THE TERM IN-HOUSE, WHAT DOES THAT REALLY MEAN?

A. WE HAD HAD A SUCCESSFUL -- WHAT WE CALL IN-HOUSE, WHEN A WOMEN WAS DISCOVERED TO HAVE BEEN COCAINE POSITIVE IN A DRUG

TEST, WHETHER SAY SHE DELIVERED IN THE HOSPITAL OR NOT,
WHETHER HER BABY WAS SHOWN TO BE POSITIVE AND TRANSFERRED TO
THE HOSPITAL, WE HAD BASICALLY THREE CATEGORIES. IT WOULD BE
A WOMEN WHO GAVE BIRTH AT MUSC, WHO SHE OR HER BABY WERE
COCAINE POSITIVE. A BABY WHO IS TRANSFERRED WHO WAS COCAINE
POSITIVE FROM ANOTHER HOSPITAL. SO WE HAD THREE. MOTHER OR
BABY OR TRANSFER.
AND THAT WOULD BASICALLY MEET THE CRITERIA FOR
ANYONE WE WOULD BE WILLING TO SEE. ONCE WE GOT THAT REFERRAL,
WE WOULD THEN ASSESS THE SITUATION. IN OTHER WORDS, WAS THIS
WOMEN A CHRONIC ABUSER, ADDICTED, A ONETIME USER. THINGS
ALONG THOSE LINES SO THAT WE KNEW WHAT WAS GOING ON, BECAUSE
TO LUMP ALL CASES INTO ONE IS NOT NECESSARILY CLINICALLY
PRUDENT.
Q. I'M NOT FOLLOWING YOU. WHEN YOU'RE DESCRIBING THE "WE"
THAT YOU'RE TALKING ABOUT?

[P. WILLIAMS 127]

A. WELL, AT THIS POINT IT WAS THE DIVISION OF SOCIAL WORK.
Q. THE DIVISION OF SOCIAL WORK WHERE?
A. AT MUSC.
Q. OKAY.

A. AND CERTAIN MEMBERS OF A COMMITTEE OVER AT THE SUBSTANCE ABUSE COMMISSION.
Q. THE CHARLESTON COUNTY?
A. HERE IN CHARLESTON, YES.
Q. THAT'S THE "WE" THAT YOU'RE TALKING ABOUT?
A. YES. WE HAD BEEN TALKING ABOUT PROVIDING SPACES AT MUSC IN ORDER TO DO THE ASSESSMENTS, THE REFERRALS, ETCETERA, OF THOSE WOMEN WHO WERE FOUND OR WHOSE BABIES WERE FOUND TO BE COCAINE POSITIVE. AND IT WASN'T JUST COCAINE.
Q. IF IT WASN'T JUST COCAINE?
A. WE WEREN'T FOCUSING ON JUST COCAINE, NO. WE WERE LOOKING AT ANY KIND OF SUBSTANCE ABUSE ISSUE THAT MIGHT ARISE, BE IT ALCOHOL ABUSE, AND OTHER TYPES OF DRUG ABUSE.
Q. DID THE REFERRAL PROCESS THAT YOU ARE TALKING ABOUT NOW INVOLVE ANY ARRESTS IN THAT PROCESS?
A. CERTAINLY NOT. IF I MAY, ONE OF THE THINGS IN THE AREA OF SUBSTANCE ABUSE AS A RULE, CRIMINALIZATION IS THE VERY LAST RESORT AND IS ONLY RECOMMENDED BY TREATMENT EXPERTS.
MS. SHOWERS: I'LL OBJECT FOR LACK OF FOUNDATION FOR THIS WITNESS TO GIVE OPINION TESTIMONY. SHE IS NOT LISTED AS AN EXPERT.

THE COURT: IS THAT CORRECT?
MS. DUNN: SHE HAS NOT BEEN LISTED.
THE COURT: LADIES AND GENTLEMEN. LADIES AND GENTLEMEN, DISREGARD THAT LAST ANSWER. SHE HAS NOT BEEN LISTED AS AN EXPERT. SHE IS A FACT WITNESS.
THE WITNESS: I'M SORRY.
THE COURT: LET'S GO ON DOWN TO THE FACTS SHE IS GOING TO TESTIFY TO.
Q. (BY MS. DUNN, CONTINUING) DID YOU HAVE OCCASION IN THE COURSE OF YOUR WORK AT THE MEDICAL UNIVERSITY TO ATTEND MEETINGS IN WHICH THE ISSUE OF STERILIZATION WAS DISCUSSED?
A. NOT MEETINGS SPECIFIC TO THAT SUBJECT, HOWEVER IN THE COURSE OF DOING, YOU KNOW, ON MY REGULAR JOB, IF WE WERE DISCUSSING A PATIENT'S DEMOGRAPHIC ISSUES, ANY KIND OF REFERRALS TO SOCIAL WORK IN REGARD TO A PATIENT, THERE WERE COMMENTS MADE SPECIFIC TO -- BY SHIRLEY BROWN SPECIFIC TO HER OPINIONS ON WHETHER OR NOT THE MOTHER SHOULD BE STERILIZED.
Q. AND WHAT WERE THE OPINIONS THAT YOU HEARD?
A. BASICALLY THAT THIS MOTHER SHOULD BE STERILIZED OR SHE -- YOU KNOW, I TALKED TO HER ABOUT BEING STERILIZED AND SHE WON'T BE STERILIZED.

Q. AND WHAT MOTHER WAS SHE TALKING ABOUT IN THAT SITUATION?
A. WELL THERE WERE FREQUENT INSTANCES. THIS WAS A HABITUAL BEHAVIOR ON SHIRLEY'S PART.
Q. BUT WHAT KIND OF PATIENT WAS SHE TALKING ABOUT?

[M. WILLIAMS 129]

A. A BLACK OR AFRICAN AMERICAN WOMAN PATIENT.
Q. DID SHE EVER TALK ABOUT IT IN CONNECTION WITH PATIENTS THAT WERE NOT IDENTIFIED AS PATIENTS WHO WERE AFRICAN AMERICAN?
A. NOT TO MY RECOLLECTION.
Q. WHEN YOU SAY THIS WAS OFTEN, DURING WHAT PERIOD OF TIME WOULD YOU HAVE BEEN INVOLVED IN THOSE CONVERSATIONS?
A. DO YOU MEAN -- DO YOU MEAN LIKE HOW MANY YEARS OR --
Q. YES. WHAT PERIOD OF TIME ARE WE TALKING ABOUT?
A. PRIOR TO THE INTERAGENCY POLICY BEING IMPLEMENTED, PROBABLY 80 - '88 UNTIL I LEFT IN '91.
Q. AND WHEN DID YOU LEAVE?
A. IN THE FALL OF '91.
Q. WERE YOU WORKING AT THE MEDICAL UNIVERSITY WHEN THERE WERE ARRESTS MADE UNDER THE INTERAGENCY POLICY?
A. YES, I WAS.
Q. DID YOU EVER HAVE OCCASION TO HAVE ANY CONVERSATIONS WITH

SHIRLEY BROWN CONCERNING HOW THE ARRESTS WERE MADE?
A. I HAD EXPRESSED CONCERNS PRIOR TO THE POLICY BEING IMPLEMENTED. ACTUALLY THE POLICY WAS FORMULATED ON THE HEELS OF THE PRACTICE. THE ARREST OCCURRED BEFORE THE POLICY WAS FORMED. SO I DID DISCUSS THAT I WAS NOT COMFORTABLE WITH THIS APPROACH TO SHIRLEY BROWN. I BROUGHT IT UP IN THOSE PREPLANNING MEETINGS. AND I ALSO DISCUSSED THIS WITH MY SUPERVISOR AND DIRECTOR.

[M. WILLIAMS 130]

Q. DID YOU EVER HAVE OCCASION AFTER THE ARRESTS -- AFTER THAT POLICY HAD BEEN IN PLACE AND ARRESTS HAD BEEN MADE, WERE YOU PART OF ANY CONVERSATION WITH SHIRLEY BROWN WHERE SHE DISCUSSED WHO WAS BEING ARRESTED?
A. YES.
Q. AND WHAT WAS THAT CONVERSATION?
A. AT A POINT WHEN A WOMEN WAS BEING ARRESTED AND LEAVING A UNIT, SHIRLEY BROWN MENTIONED THAT, WE HAD BETTER ARREST A WHITE WOMEN SOON OR THEY'RE GOING TO THINK I'M A RACIST.
Q. AND WHEN WAS THAT COMMENT MADE? CAN YOU PINPOINT THAT IN TIME?
A. I BELIEVE THAT IT WAS IN THE LAST YEAR -- MY LAST YEAR

BETWEEN '90 AND '91. I CAN'T PINPOINT IT.
Q. WAS IT AT THE HOSPITAL THAT YOU HEARD THAT COMMENT?
A. YES. ALL OF THESE CONVERSATIONS TOOK PLACE AT THE HOSPITAL.
Q. IN CONNECTION WITH YOUR POSITION IN SOCIAL WORK, DO YOU HAVE SOME TRAINING IN SUBSTANCE ABUSE IN MAKING SUBSTANCE ABUSE REFERRALS?
A. I HAVE MORE THAN SOME TRAINING.
Q. WHAT TRAINING DO YOU HAVE?
A. NOT ONLY IN MY INTERNSHIPS IN GRADUATE SCHOOL, BUT INPATIENT PSYCHIATRIC AND SUBSTANCE ABUSE HOSPITALS. AS WELL AS TRAINING THROUGH THE SOUTH CAROLINA SCHOOL FOR DRUG AND ALCOHOL STUDIES AT CLEMSON.

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[M. WILLIAMS 132]

THE WITNESS: AND THIS IS WHAT SHE WAS TO DO.
MS. SHOWERS: THIS IS BEYOND THE SCOPE OF THIS WITNESS.
THE COURT: I DON'T KNOW WHAT HER RELIGIOUS BELIEFS HAVE TO DO WITH THIS, BUT I'LL LET YOU PROCEED JUST A LITTLE BIT FURTHER.
Q. (BY MS. DUNN, CONTINUING) IN CONNECTION WITH MS. BROWN'S RELIGIOUS BELIEFS, DID YOU COME TO KNOW HER OPINIONS IN

RELATIONSHIP TO INTERRACIAL RELATIONSHIPS?
A. I DID. AGAIN IN THE COURSE OF DISCUSSING DEMOGRAPHICS WITH A CASE AND A REFERRAL, IF IT BECAME APPARENT THAT THIS WAS BIRACIAL CHILD, SHE WOULD SAY THAT THIS IS NOT RIGHT, IT'S NOT GOD'S WAY. IT'S NOT GOD'S WILL.
Q. DID YOU HEAR THAT ON ONE OCCASION?
A. SEVERAL OCCASIONS.
Q. AND IN WHAT TIME-FRAME?
A. LET'S PUT IT THIS WAY, I DIDN'T NOT HEAR IT FROM HER. UNDER THOSE CIRCUMSTANCES THERE WAS A BRIEF SIX-MONTH PERIOD WHEN I WORKED AT MUSC IN THE SPRING OF '88 WHERE I WAS WORKING IN THE ADULT SIDE IN A DIFFERENT AREA. SO THAT WHEN I MOVED OVER TO THE NEONATAL INTENSIVE CARE UNIT, JUST PRIOR TO THE IMPLEMENTATION OF THAT POLICY, IT WAS ROUTINE. I ALSO HAD HEARD IT WHEN I WAS DOING MY GRADUATE INTERNSHIP THERE AS WELL.
Q. WAS THIS COMMON KNOWLEDGE IN THE WORK ENVIRONMENT?

[M. WILLIAMS 133]

A. YES, IT WAS COMMON KNOWLEDGE.
MS. DUNN: NO FURTHER QUESTIONS, YOUR HONOR.

CROSS-EXAMINATION

BY MS. SHOWERS:

Q. GOOD AFTERNOON. MS. WILLIAMS, YOU WERE A SOCIAL WORKER IN THE DEPARTMENT OF PEDIATRICS, NOT OBSTETRICS, CORRECT?

A. MY BASE WAS THE NEONATAL INTENSIVE CARE UNIT. AND WHEN I LEFT THE MEDICAL UNIVERSITY I WAS THE SUPERVISOR OR -- JUST PRIOR TO LEAVING THE MEDICAL UNIVERSITY I WAS THE SUPERVISOR OVER THE PEDIATRIC HOSPITAL, BUT I ALSO WAS DESIGNATED BY LYNN FREDRICK, OUR DIRECTOR, TO COVER THE OUTPATIENT OB CLINIC, INPATIENT OB CLINIC, AS WELL AS THE WELL BABY NURSERY.

Q. YOU MAY HAVE SEEN SHIRLEY BROWN IN THE HALLWAY EVERYDAY, BUT DID YOU NOT INTERACT WITH HER ON A PROFESSIONAL LEVEL ON A DAILY BASIS, DID YOU?

A. TO THE CONTRARY, I INTERACTED WITH HER ON A PROFESSIONAL LEVEL ON A DAILY BASIS AS A RULE.

Q. YOU CANNOT RECALL HOW MANY PATIENTS YOU WITNESSED MS. BROWN INTERACT WITH CONCERNING THIS POLICY, CORRECT? ON A DAILY BASIS?

A. ONCE THE CRIMINALIZATION PROCESS BEGAN

Q. PLEASE ANSWER MY QUESTION. YOU CANNOT RECALL HOW MANY PATIENTS YOU WITNESSED MS. BROWN INTERACT WITH ON A DAILY BASIS, CORRECT?

A. WELL THAT'S ANOTHER QUESTION. WHICH QUESTION DO YOU WANT

* * *

[M. WILLIAMS 135]

Q. SPECIFIC DATES AND TIMES?
A. WELL, I THINK WE HAVE A DIFFERENT DEFINITION OF CIRCUMSTANCES MAYBE.
Q. SO THE ANSWER TO MY QUESTION IS NO, CORRECT?
A. IT DEPENDS ON WHAT YOU MEAN BY CIRCUMSTANCE. I'M UNCLEAR WHAT YOU MEAN BY THAT.
Q. SPECIFIC DATES AND TIMES?
A. NO, I CANNOT REMEMBER THAT.
Q. THEN YOU AGREE WITH ME THAT YOU OBSERVED SHIRLEY BROWN SPEAK WITH THREE OR LESS WOMEN ABOUT THE INTERAGENCY POLICY, CORRECT?
A. THAT IS CORRECT.
Q. AND ALL THREE OF THEM WERE BLACK WOMEN, CORRECT?
A. THAT IS CORRECT.
Q. YOU NEVER SAW HER INTERACT WITH A WHITE WOMEN, CORRECT?
A. CAN YOU ASK THAT QUESTION AGAIN, PLEASE.
Q. YOU NEVER SAW HER INTERACT WITH A WHITE WOMEN CONCERNING THE INTERAGENCY POLICY, CORRECT?
A. I DON'T THINK THERE HAD BEEN A WHITE WOMEN INVOLVED IN THAT BEFORE I LEFT.
Q. THAT WAS NOT MY QUESTION. PLEASE ANSWER MY QUESTION.
A. I LEFT BEFORE A WHITE WOMEN WAS INVOLVED.
THE COURT: SHE ASKED YOU A SPECIFIC QUESTION

WHETHER OR NOT YOU EVER SAW HER INTERACT WITH A WHITE WOMEN, YES OR NO?

[M. WILLIAMS 136]

A. NO.
Q. YOU ALWAYS LEFT THE ROOM WHEN MS. BROWN BEGAN TO INTERACT WITH A PATIENT ABOUT THE INTERAGENCY POLICY, CORRECT?
A. YES.
Q. YOU DID NOT WANT TO BE INVOLVED IN THE POLICY, CORRECT?
A. NO, WE HAD DESIGNATED ANOTHER SOCIAL WORKER TO HANDLE THAT.
Q. AND AS TO HOW THE POLICY WORKED, YOU WERE NOT AWARE THAT A PHYSICIAN DICTATED WHICH PATIENTS WERE TESTED, WERE YOU?
A. TO HEAR SHIRLEY BROWN TELL IT, SHE DECIDED THAT.
Q. NO, MS. WILLIAMS, MY QUESTION IS: YOU WERE NOT AWARE THAT A PHYSICIAN WAS THE ONE WHO DECIDED WHICH PATIENTS WERE TESTED, WERE YOU?
A. I WAS TOLD BY SHIRLEY BROWN WHO SHE DIRECTED THE PHYSICIAN TO TEST.
Q. DID YOU EVER SEE HER DO THAT?
A. NO, I DID NOT.
Q. AND YOU WERE NOT AWARE THAT IT WAS THE SUBSTANCE ABUSE TREATMENT PROFESSIONALS WHO DECIDED WHO WAS OR WHO WAS NOT SUCCESSFUL WITH SUBSTANCE ABUSE TREATMENT, AND THUS SHOULD BE

REPORTED TO LAW ENFORCEMENT, WERE YOU?
A. COULD YOU ASK THAT AGAIN, PLEASE.
Q. YOU WERE NOT AWARE THAT THE SUBSTANCE ABUSE TREATMENT PROFESSIONALS WERE THE ONES WHO DECIDED WHICH PATIENTS WERE COMPLIANT WITH THE TREATMENT, AND THOSE WHO WERE NOT COMPLIANT

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[M. WILLIAMS 139]

A. I WANT TO JUST MAKE SURE THAT I HAVE GOT YOUR QUESTION CORRECTLY. WAS I PRESENT WHEN THE DECISION TO?
Q. TO TEST A PATIENT UNDER THE POLICY WAS MADE?
A. ON THE NEONATAL UNIT I WAS.
Q. HOW ABOUT IN THE OB UNIT?
A. NOT IN THE OB UNIT, NO, BECAUSE MY BASE WAS NEONATAL INTENSIVE CARE UNIT.
Q. AND YOU AGREE WITH ME THAT YOU DID NOT HAVE THE WHOLE PICTURE OF WHAT WAS GOING ON WITH THIS POLICY, DID YOU?
A. CERTAINLY NOT.
Q. AND YOU AGREE WITH ME THAT YOU DO NOT KNOW OF ANY INSTANCES WHERE ANY OTHER OF THE NAMED DEFENDANTS IN THIS CASE MADE ANY STATEMENTS THAT YOU WOULD TERM RACIALLY DEROGATORY, CORRECT?
A. COULD YOU PLEASE REPEAT THAT QUESTION.

Q. YOU AGREE WITH ME THAT YOU DO NOT KNOW OF ANY INSTANCES WHERE ANY OF THE OTHER NAMED DEFENDANTS IN THIS CASE MADE ANY STATEMENT THAT YOU TERM RACIALLY DEROGATORY, CORRECT?

A. ARE YOU ASKING ME IF ANY OF THE OTHER PEOPLE -- IF I HEARD ANYBODY ELSE OTHER THAN SHIRLEY BROWN MAKE RACIAL REMARKS?

Q. YES.

A. NO, I DID NOT.

MS. SHOWERS: COULD I HAVE A MOMENT, YOUR HONOR.

(PAUSE IN PROCEEDINGS.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM TESTIMONY OF PATRICIA WILLIAMS

[PATRICIA WILLIAMS 210]

REALLY KNOW.
THE COURT: SPEAK INTO THE MICROPHONE, PLEASE.
THE WITNESS: OKAY. YES.
Q. (BY MS. DUNN, CONTINUING) AND WHERE DID YOU GO INITIALLY TO GET PRENATAL CARE?
A. FIRST I WENT TO NORTH CHARLESTON HEALTH DEPARTMENT.
Q. AND WHERE IS THAT?
A. NORTH CHARLESTON.
Q. AND ABOUT - DO YOU RECALL HOW FAR ALONG IN THAT PARTICULAR PREGNANCY YOU WERE WHEN YOU WENT TO THAT? WHEN YOU FIRST GOT PRENATAL CARE?
A. PROBABLY ABOUT FIVE OR SIX MONTHS, I'M NOT REALLY SURE
Q. DID YOU CONTINUE TO GET YOUR PRENATAL CARE THERE?
A. NO. I GOT TRANSFERRED TO MUSC.
Q. AND DO YOU RECALL ABOUT WHEN YOU WERE TRANSFERRED?
A. RIGHT AROUND JANUARY. I'M NOT SURE.
Q. JANUARY OF 1992?
A. UMM-HMM.
Q. WHEN YOU SAY YOU WERE TRANSFERRED TO THE MEDICAL

UNIVERSITY OF SOUTH CAROLINA, WHAT PART OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. I THINK IT WAS HIGH RISK.
Q. HIGH RISK WHAT?
A. CLINIC.
Q. DO YOU REMEMBER WHERE AT THE HOSPITAL THAT WAS LOCATED?

[PATRICIA WILLIAMS 211]

A. OB-GYN.
Q. AND DID YOU CONTINUE THEN TO GET PRENATAL CARE AT THE HIGH RISK CLINIC AT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA?
A. YES, I DID.
Q. DID YOU GO REGULARLY?
A. YES.
Q. DO YOU RECALL EVER HAVING A UDS DRUG SCREEN DONE ON YOU WHEN YOU WERE GETTING PRENATAL CARE?
A. A WHAT?
Q. A UDS DRUG SCREEN?
A. YES.
Q. WHAT IS THAT? A SCREEN TO DETERMINE WHETHER YOU WERE USING DRUGS?
A. YES, I HAD IT DONE.
Q. AND WHEN WAS YOUR FIRST MEMORY OF THAT?
A. THE FIRST TIME I WENT, WHICH WOULD HAVE BEEN IN JANUARY, I BELIEVE.
Q. DID YOU KNOW THE DRUG SCREEN WAS GOING TO BE TAKEN BEFORE IT WAS TAKEN?
A. YES.

Q. AND WHAT HAPPENED THEN?
A. WELL, WHEN I FIRST WENT - WELL I ASKED TO GO TO MUSC BECAUSE I HAVE A PROBLEM.
Q. WHAT WAS YOUR PROBLEM?
A. DRUGS, OKAY?

[PATRICIA WILLIAMS 212]

Q. WHEN YOU SAY YOU ASKED, WHO DID YOU ASK?
A. I REQUESTED FROM THE NORTH AREA CLINIC. I ASKED THEM FROM THE CLINIC IN NORTH CHARLESTON TO GO THERE BECAUSE I FELT I NEEDED HELP.
Q. WHAT DID YOU NEED HELP WITH?
A. MY COCAINE PROBLEM.
Q. AND WHEN YOU WENT TO THE MEDICAL UNIVERSITY, DID YOU REPEAT - DID YOU REPORT YOUR PROBLEM TO THE PEOPLE THERE?
A. YES, I DID.
Q. DO YOU RECALL WHO YOU TALKED TO?
A. I SPOKE TO SHIRLEY BROWN, I BELIEVE.
Q. DID YOU SPEAK TO HER THE FIRST TIME THAT YOU WENT TO THE PRENATAL CLINIC?
A. I DON'T REALLY RECALL.
Q. DO YOU RECALL WHAT ELSE HAPPENED WHEN YOU WENT TO THE PRENATAL CARE THERE?
A. OKAY. AFTER I REQUESTED THAT, YOU KNOW, THAT WAS POSITIVE AND THEN, YOU KNOW, I WAS GOING IN - LIKE EVERY TWO

WEEKS IN THE BEGINNING, YOU KNOW. AND, WELL, I WENT THERE SEEKING HELP, YOU KNOW, BUT I DIDN'T REALLY GET IT, SO.

Q. DID YOU GET REFERRED TO SOME KIND OF SUBSTANCE ABUSE TREATMENT?

A. YEAH. SHE WANTED ME TO GO TO -

Q. WHEN YOU SAY SHE, WHO?

A. SHIRLEY BROWN. CHARLESTON COUNTY SUBSTANCE ABUSE.

[PATRICIA WILLIAMS 213]

Q. DID YOU DO THAT?

A. WELL, AT THAT TIME I DIDN'T HAVE ANYBODY TO KEEP THE KIDS AND I DIDN'T HAVE TRANSPORTATION, YOU KNOW. AND WELL, YOU KNOW, I EXPLAINED ALL OF THAT TO HER AND SHE SAID THAT WAS MY PROBLEM.

Q. LET ME INTERRUPT YOU. WHEN YOU SAY YOU DIDN'T HAVE THAT, WHAT OTHER KIDS DID YOU HAVE?

A. WELL I HAD THREE OTHER - WELL TWO OTHER CHILDRENS WITH ME.

Q. WHAT WERE THEIR AGES IN THE TIME FRAME THAT WE'RE TALKING ABOUT?

A. OKAY. MY SON WAS 14. 14. AND MY DAUGHTER, SHE WAS, I GUESS, NINE.

Q. GO BACK. YOU REPORTED THAT - THE PROBLEMS. AND WHAT WAS THE RESPONSE FROM MS. BROWN?

A. SHE SAID IT WAS MY PROBLEM WITH THE KID.
Q. DID YOU EVER GO TO SUBSTANCE ABUSE TREATMENT DURING THE PRENATAL CARE?
A. NO, I DIDN'T.
Q. DID YOU CONTINUE GOING FOR PRENATAL CARE?
A. YES, I DID.
Q. AND WHAT HAPPENED AS YOU WENT BACK FOR PRENATAL CARE?
A. WELL, EVERY TIME I WENT BACK, YOU KNOW, IT JUST IT WASN'T WHAT I WAS LIKE LOOKING FOR, YOU KNOW, IT WAS LIKE A PUT DOWN AND STUFF LIKE THIS, YOU KNOW. AND EVERY TIME I WENT, YOU

[PATRICIA WILLIAMS 214]

KNOW IT WAS LIKE - LIKE -
Q. I'M UNSURE IF THE MIKE IS STILL ON.
A. YES? OKAY. YOU KNOW, LIKE EVERY TIME I WENT THERE THEY PUT ME DOWN AND TREATED ME LIKE, YOU KNOW, I DIDN'T HAVE NO RIGHTS AND - AND, YOU KNOW, IT DIDN'T HELP. IT DIDN'T HELP MY SITUATION, YOU KNOW, SO I DIDN'T GET WHAT I WAS LOOKING FOR.
Q. MS. WILLIAMS, YOU SAID THAT YOU PUT DOWN. COULD YOU BE MORE SPECIFIC WHAT YOU WERE TALKING ABOUT?
A. YOU KNOW, I WAS TREATED LIKE I DIDN'T HAVE ANY RIGHTS IN THE WORLD, YOU KNOW, LIKE AN ANIMAL.
Q. AND WHO TREATED YOU THAT WAY?

A. SHIRLEY BROWN DID.
Q. CAN YOU RECALL ANYTHING SPECIFIC THAT SHE SAID TO YOU THAT MADE YOU FEEL THAT WAY?
A. WELL, YOU KNOW, LIKE A LOT OF THE CONSENT FORMS AND STUFF SHE PRESENTED, IT WAS LIKE STATED TO ME WHETHER - I SIGN THEM OR NOT, YOU KNOW, WHATEVER IT WAS WAS GOING TO GET DONE WHETHER I SIGNED OR NOT. YOU KNOW. AND -
Q. KEEP TALKING AS LOUD AS YOU CAN.
A. YOU KNOW, JUST, JUST THINGS LIKE THAT SHE WOULD SAY TO ME.
Q. AND HOW DID YOU RESPOND THEN WHEN SHE SPOKE TO YOU?
A. HOW DID I RESPOND? WELL, I WAS LIKE ANGRY AND STUFF, YOU KNOW, AND EVERY TIME - EVERY TIME IT WAS TIME FOR ME TO LIKE

[PATRICIA WILLIAMS 215]

GO FOR MY CHECKUP LIKE I WAS DELIBERATELY USE, YOU KNOW.
Q. WHY WOULD YOU DELIBERATELY USE?
A. BECAUSE I WAS LOOKING FOR HELP AND, YOU KNOW, JUST THE WAY I WAS TREATED AND TALKED TO, YOU KNOW, JUST MADE ME REBEL, I GUESS. MADE ME ANGRY.
Q. DID YOU TEST POSITIVE FOR DRUGS ON A DRUG SCREEN ANOTHER TIME BEYOND THE TIME THAT YOU DESCRIBED YOUR FIRST TIME?
A. YOU MEAN WITH MY BUSINESS AT THE CLINIC?

Q. YES.
A. YES.
Q. DO YOU RECALL WHEN YOU TESTED POSITIVE FOR A SECOND TIME?
A. I THINK PROBABLY THE SECOND TIME I WENT BACK, I'M NOT SURE.
Q. WERE YOU USING COCAINE ALL THROUGH THAT PREGNANCY?
A. NO, NOT ALL THROUGH.
Q. WHAT - HOW DID YOU USE IT? WHAT DID YOU DO?
A. PUT IN THE CIGARETTE.
Q. HOW OFTEN WOULD YOU USE?
A. I DON'T REALLY RECALL, BUT IT WASN'T THAT OFTEN. AND LIKE I WASN'T - I WASN'T - WELL, I DON'T KNOW HOW TO EXPLAIN IT, YOU KNOW, BUT WHEN I USE AND STUFF I DIDN'T LIKE REALLY INHALE - INHALE, YOU KNOW. AND THEN I WAS ALSO PRAY. YOU KNOW.
Q. DO YOU RECALL WHEN YOU WENT TO THE PRENATAL CLINIC FOR THE LAST TIME BEFORE YOUR CHILD WAS BORN?

[PATRICIA WILLIAMS 216]

A. NO, I DON'T.
Q. DID YOU GET ANY KIND OF SUBSTANCE ABUSE TREATMENT BEFORE YOUR CHILD WAS BORN?
A. NOT BEFORE.
Q. WERE YOU OFFERED ANY SUBSTANCE ABUSE TREATMENT THROUGH THE MEDICAL UNIVERSITY OTHER THAN THE REFERRAL TO CCSAC?

A. TO WHAT?
Q. OTHER THAN THE REFERRAL TO THE CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION?
A. NO, I WASN'T.
Q. BEFORE YOUR CHILD WAS BORN?
A. NO.
Q. DID YOU COME TO HAVE THE CHILD?
A. YES, I DID.
Q. CAN YOU DESCRIBE THE CIRCUMSTANCES OF THE DELIVERY?
A. OKAY. WELL, WHEN I WENT IN TO HAVE MY -
Q. YOU NEED TO SLOW DOWN A LITTLE BIT. OKAY? SO THAT WE CAN HEAR YOU AND IT'S LOUD ENOUGH.
THE COURT: YOU LET HER ANSWER THE QUESTION.
A. OKAY. MY LITTLE BOY, HE IS FOUR, HE - HIS NAME IS TEVON WILLIAMS. AND WHEN I WENT IN - WHEN I WENT IN TO HAVE HIM, YOU KNOW, I DON'T KNOW WHETHER IT WAS JUST ME, BUT I WASN'T TREATED THE WAY WITH THE OTHER TWO CHILDREN, YOU KNOW. IT WAS LIKE BECAUSE I USED DRUGS THEY KIND OF LIKE TREATED YOU DIFFERENTLY. THEY DIDN'T SPEND A WHOLE LOT OF TIME IN THE

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[PATRICIA WILLIAMS 220]

NORTH AREA OF DORCHESTER AND WENT TO THE MUSC.
Q. DO YOU RECALL WHETHER - WHETHER YOU HAD ANY ANESTHESIA

OF ANY SORT, WHETHER YOU WERE KNOCKED OUT AT ALL TO HAVE YOUR BABY?

MS. SHOWERS: I OBJECT TO RELEVANCE.

THE COURT: I DON'T KNOW WHY THAT WOULD BE RELEVANT. I SUSTAIN THE OBJECTION.

MS. DUNN: YOUR HONOR, WE WOULD SAY IT WOULD BE RELEVANT IN TERMS OF THE STORY IN TERMS OF THE TIME SEQUENCE AND WHAT HER CONDITION WAS.

THE COURT: THEN THE QUESTION IS OBJECTIONABLE BECAUSE IT'S LEADING.

MS. DUNN: ALL RIGHT.

Q. (BY MS. DUNN, CONTINUING) MS. WILLIAMS, WHAT DO YOU RECALL ABOUT WHAT HAPPENED TO YOU AT THE HOSPITAL BETWEEN THE TIME THAT YOU ARRIVED AT THE HOSPITAL IN THE CAB AND THE TIME PERIOD IN WHICH YOUR CHILD WAS ACTUALLY BORN?

A. WELL, THEY LIKE CHECKED ME WHEN I GOT THERE AND STUFF AND SAID - THEN THEY SAID THAT, YOU KNOW, I WAS UNSTEADY. AND THEN THEY CHECKED MY URINE AGAIN AND THEN THEY, YOU KNOW, PUT ME IN THE ROOM. AND, YOU KNOW, THEY PUT THE MONITOR ON YOU. AND THEN KIND OF LIKE, YOU KNOW, LIKE, YOU KNOW, I WAS THERE FOR AWHILE. AND A GIRLFRIEND OF MINE WAS THERE WITH ME. AND SHE WOULD HAVE TO GO GET THEM TO COME AND CHECK ON ME AND

STUFF. YOU KNOW. AND - AND THEN WHEN THE PAIN STARTED

[PATRICIA WILLIAMS 221]

GETTING CLOSER, THE CONTRACTION STARTED GETTING CLOSER AND THERE WAS TOO LATE FOR THEM TO GIVE ME THE - I CAN'T REMEMBER THE NAME OF THE THING, BUT THEY GAVE ME THIS STUFF WHERE THEY - I FORGET WHAT YOU CALL IT, BUT THEY PUT IT ON YOUR BACK AND THEN LIKE USING THE NEEDLE TO PUT IT, YOU KNOW, FOR THE MEDICINE TO WORK ON YOU. BUT, THEY DID THAT AT THE LAST MINUTE, YOU KNOW. AND THE AFTER BIRTH, YOU KNOW, AND TUBE LIGATION, JUST - OKAY THEY HAD THIS - I HAD A MALE NURSE AND HE WAS REALLY KIND OF LIKE, YOU KNOW, LIKE HEAVYSET, YOU KNOW. AND JUST THE WAY HE HANDLED ME, HE WOULD LIKE - IT WASN'T TOO PLEASANT.

Q. AFTER YOUR CHILD WAS BORN, DID YOU STAY IN THE SAME ROOM WHERE THE CHILD WAS BORN OR WERE YOU MOVED SOMEWHERE ELSE?

A. AFTER THEY CLEANED ME UP AND STUFF THEY MOVED ME TO ANOTHER ROOM.

Q. AND HOW LONG DID YOU STAY IN THAT ROOM?

A. I STAYED IN THE ROOM UNTIL - UNTIL THE TIME WHEN I GOT UP TO GO HOME.

Q. WHY DID YOU THINK YOU WERE GOING TO GO HOME?
A. BECAUSE AFTER - OKAY, AFTER I HAD THE TUBE LIGATION THEY TOOK ME BACK TO MY ROOM AND THE NEXT DAY I WAS GOING TO GO HOME AND I - THEY TOLD ME I WAS GOING TO GO HOME. AND - BUT I DIDN'T GO HOME, YOU KNOW. AND -
Q. WHAT HAPPENED?
A. HUH? WHAT HAPPENED WAS, WELL, I HAVE A COUSIN THAT WORKS

[PATRICIA WILLIAMS 222]

AT MUSC, SHE IS A SERGEANT OR SOMETHING AND SHE SAID - I WAS KIND OF LIKE WORRIED ABOUT BEING ARRESTED, AND SHE TOLD ME IF THEY HADN'T TOLD ME THAT I WASN'T GOING TO BE ARRESTED YET THAT I WASN'T AND I WOULD HAVE BEEN PUT IN A SPECIAL ROOM. AND SO I JUST THOUGHT I WAS GOING TO GO HOME. AND I CALLED MY COUSIN TO COME AND PICK ME UP. AND AFTER MY COUSIN GOT THERE, THAT'S WHEN I FOUND OUT THAT I WASN'T GOING TO GO HOME.
Q. HOW DID YOU FIND THAT OUT?
A. DETECTIVE WARING, I BELIEVE HER NAME WAS, AND SHIRLEY BROWN AND ANOTHER SECURITY CAME AND TOOK ME DOWN TO ANOTHER ROOM AND -
Q. WHAT WERE YOU WEARING AT THE TIME?
A. I WAS WEARING THIS SAME STUFF I WORE IN TO HAVE MY BABY

WHICH WAS STRETCH PANTS AND A SWEATSHIRT. AND THEY TOLD ME, YOU KNOW, THEY READ ME MY RIGHTS, WHICH WAS DISTRIBUTION TO A MINOR. AND I WAS KIND OF LIKE SHOCKED. I SAID THAT I NEVER SOLD DRUGS. I USED IT BUT I NEVER SOLD. AND THEY SAID IT WAS FOR USING WHILE I WAS PREGNANT. AND SO I WAS LIKE SO SHOCKED, YOU KNOW. SO I WANTED TO SEE MY COUSIN, AND SHE WENT DOWN TO GET THE CAR, TO TELL HER I WASN'T GOING HOME. AND WELL I JUST NEEDED SOMEBODY TO LIKE REALLY HOLD ME. AND - BUT THEN I WASN'T ALLOWED TO SEE HER BECAUSE SHIRLEY BROWN FIGURED THAT WE WOULD MAKE A SCENE, SO I CAN'T REMEMBER WHAT MR. EDWARD - I KNOW SOMEBODY WAS THERE AT THE MEDICAL UNIVERSITY AT THE TIME IN THE ROOM WITH US. AND HE SAID THAT HE DIDN'T SEE ANY

[PATRICIA WILLIAMS 223]

HARM IN ME SEEING MY COUSIN AND LETTING HER KNOW I WASN'T GOING HOME. BUT BY THE TIME HE GO LOOKING FOR HER AND CAME BACK, SHIRLEY BROWN DONE WHEELED ME AROUND AND OUT OF THE ROOM AND DOWN THE HALLWAY TOWARD THE POLICE CAR. AND –

Q. DURING THE PERIOD OF TIME WHEN YOU WERE IN THE ROOM, WITH - WHEN YOU WERE READ YOUR RIGHTS AND THE CIRCUMSTANCES THAT

YOU JUST DESCRIBED, HOW DID YOU FEEL? WHAT WERE YOU FEELING DURING THAT TIME?

A. I WAS IN SHOCK.

Q. AND WHAT DOES THAT MEAN?

A. I MEAN, YOU KNOW, I COULDN'T BELIEVE THAT IT WAS HAPPENING AND STUFF, YOU KNOW. IT WASN'T AWARE THAT IT WAS GOING TO HAPPEN. EVERYBODY KNEW EXCEPT ME BECAUSE ONE OF MY COUSINS THAT WORK THERE, YOU KNOW, SHE CAME INTO MY ROOM WHEN I WAS GETTING DRESSED AND WAS ALL EXCITED ABOUT GOING HOME AND SHE JUST CALLED MY NAME AND SHE TURN AND WALK AWAY, BUT I HEARD THE TEARS IN HER VOICE AND YOU KNOW. AND THEN TOO THEY WERE LIKE STALLING ME AND STUFF BECAUSE I WAS SUPPOSED TO HAVE BEEN GONE SINCE AROUND 12 AND THEY KEPT STALLING ME THAT THEY WERE WAITING ON SOMETHING, BUT NOBODY EVER TOLD ME THAT I WAS GOING TO GO TO JAIL.

Q. WHAT DO YOU MEAN THEY KEPT STALLING YOU?

A. WELL THEY KEPT LIKE THEY HAD TO WAIT ON SOMETHING - SOMETHING ABOUT MY RELEASE OR SOMETHING BEFORE I LEAVE THE HOSPITAL, YOU KNOW. AND I GUESS ALL OF THIS TIME SHE WAS JUST

[PATRICIA WILLIAMS 224]

GETTING THE STUFF SET UP WHERE THEY COULD LEGALLY ARREST ME.

Q. WHO WAS THE "THEY" THAT YOU REFERRED TO?
A. WELL SHIRLEY BROWN AND THE DETECTIVE, WHOEVER MADE THE DECISION FOR ME TO GO TO JAIL.
Q. YOU HAVE DESCRIBED BEING IN THE ROOM AND BEING ARRESTED. WHAT HAPPENED AFTER THAT?
A. REPEAT THAT.
Q. WHAT HAPPENED NEXT? WHAT HAPPENED AFTER YOU LEARNED THAT YOU WERE UNDER ARREST?
A. WELL, YOU KNOW, LIKE I SAID I WAS IN SHOCK AND STUFF. AND I WANTED TO SEE MY COUSIN TO LET HER KNOW, YOU KNOW. AND YOU KNOW, JUST SOMEBODY TO HUG OR SOMETHING, YOU KNOW. BUT SHIRLEY BROWN WOULDN'T PERMIT IT. AND, YOU KNOW.
Q. WHAT HAPPENED NEXT?
A. SO AFTER THAT, YOU KNOW, THEY - WELL, YOU KNOW, AFTER THEY READ ME MY RIGHTS AND STUFF THEY PUT THE CUFFS ON ME AND SHACKLES.
Q. DESCRIBE THE CUFFS AND THE SHACKLES, PLEASE.
A. AROUND THE WAIST. AND -
Q. WHAT WENT AROUND YOUR WAIST?
A. THE CHAIN THE SHACKLES AND - AND THEN THEY - AND THEN THEY CUFFED MY HANDS AND THEN THEY PUT SOMETHING ON MY LEG TOO AFTER I GOT IN THE CHAIR, THE WHEELCHAIR. AND THEN THEY THREW A SHEET OVER ME.
Q. WHO THREW A SHEET OVER YOU?

[PATRICIA WILLIAMS 225]

A. I THINK IT WAS DETECTIVE WARING. OR SHIRLEY BROWN. ONE OF THEM.
Q. AND ONCE YOU'RE IN THE CHAIR, THEN WHAT HAPPENED?
A. WELL, LIKE I SAID, ONE OF THE PEOPLE THAT WORK FOR THE HOSPITAL WENT TO FIND MY COUSIN SO I COULD LET HER KNOW THAT I WASN'T GOING TO GO HOME WITH HER. AND I, YOU KNOW, SHIRLEY BROWN DIDN'T WANT HIM TO DO THAT BECAUSE SHE FIGURED WE WERE GOING TO MAKE A SCENE. AND WHEN HE WENT LOOKING FOR HER, SHIRLEY BROWN WHEELED THE CHAIR OUT THE ROOM AND PUSHED ME ON DOWN THE HALL. AND DETECTIVE WARING TOOK ME FROM THERE AND TOOK ME OUT TO THE POLICE CAR TO THE CRUISER.
Q. DO YOU RECALL WHAT FLOOR YOU WERE ON?
A. NO, I DON'T.
Q. DO YOU RECALL HOW FAR IT WAS FROM YOUR ROOM TO HOWEVER YOU GOT OFF THE FLOOR?
A. NO. NO, I DON'T RECALL ALL OF THAT.
Q. HOW DID YOU FEEL ON THE WAY FROM THE ROOM TO THE CAR?
A. I MEAN, I COULDN'T - WELL, I HAD FELT LIKE A NOBODY. I COULDN'T REALLY BELIEVE THAT THAT WAS ACTUALLY HAPPENING, YOU KNOW.
Q. AND WHEN YOU GOT TO THE CAR, HOW DID YOU GET IN THE CAR?

A. DETECTIVE WARING, YOU KNOW, SHE HELPED ME OUT THE WHEELCHAIR.
Q. HOW DID SHE HELP YOU?
A. SHE TOOK THE, YOU KNOW, THE STUFF THAT HOLD YOUR LEG AND

* * *

[PATRICIA WILLIAMS 227]

Q. HOW DID IT HAPPEN?
A. WELL, THEY JUST TOOK ME AND LIKE THEY USUALLY DO, JUST FINGERPRINTED ME.
Q. AND WHAT HAPPENED AFTER THE FINGERPRINTING?
A. IT WAS SO LONG AGO I'M TRYING TO REMEMBER. AFTER THE FINGERPRINTING, WELL I DON'T KNOW WHAT ALL THEY DID FIRST. ALL I KNOW WAS THAT I WAS FINGERPRINTED, PICTURE TOOKEN AND THEN THEY GO THROUGH YOUR PURSE AND ALL OF THAT.
Q. WHAT DID YOU SAY?
A. ALL I REMEMBER THEM GOING THROUGH YOUR PURSE AND FINGER PRINTING YOU AND TAKING YOUR PICTURE.
Q. DO YOU RECALL WHAT HAPPENED NEXT WHEN THEY FINISHED WITH ALL OF THAT?
A. THEY TOOK ME TO THE CELL.
Q. DESCRIBE THE CELL?
A. THE CELL WAS - IT WAS A BIG CELL, YOU KNOW. I WAS THE ONLY PERSON IN THERE. IT WAS LIKE COLD AND CLAMMY AND – AND I HAD TO GET A MATTRESS OR SOMETHING OFF OF THE FLOOR, BUT IT

DIDN'T HAVE NO COVERING, YOU KNOW. AND THEN IT HAD THIS BIG LIKE CAST IRON SEAT, TOILET FOR YOU TO USE, YOU KNOW. AND I JUST LOOK AROUND AND - YOU KNOW, AND ESPECIALLY JUST COMING OUT OF THE HOSPITAL AND HAVING A TUBE LITIGATION AND STUFF, YOU KNOW. THERE WAS NO CLEANLINESS, YOU KNOW, ESPECIALLY HAVING OPEN WOUNDS AND ALL OF THIS, YOU KNOW, SAYING I JUST COULDN'T BELIEVE IT.

[PATRICIA WILLIAMS 228]

Q. DID YOU HAVE ANY SORT OF MEDICAL SUPPLIES WITH YOU?
A. NO.
Q. WERE YOU WEARING A SANITARY NAPKIN?
A. YES, I WAS WEARING ONE.
Q. HOW LONG WERE YOU IN THAT CELL?
A. OVERNIGHT.
Q. DID ANYONE JOIN YOU DURING THAT TIME AT ALL?
A. NO.
Q. WHEN YOU SAY OVERNIGHT, ABOUT WHAT TIME WAS IT WHEN YOU GOT THERE?
A. UMM, IT WAS PROBABLY LIKE AROUND THREE OR FOUR O'CLOCK YOU KNOW, BUT THEN IT WAS TOO LATE FOR ME TO GO IN FRONT OF THE JUDGE. SO I HAD TO WAIT UNTIL THE NEXT MORNING.
Q. DID YOU STAY IN THE SAME PLACE THAT WHOLE TIME?
A. YES.

Q. WHEN YOU SAY YOU WAITED UNTIL THE NEXT MORNING, ABOUT WHAT TIME THE NEXT MORNING?
A. I GUESS IT WAS ABOUT LIKE MAYBE AROUND TEN O'CLOCK OR SOMETHING LIKE THAT.
Q. AND WHAT HAPPENED WHEN YOU WENT IN FRONT OF THE JUDGE?
A. WELL, YOU KNOW, I - MY CHARGES WAS READ AND STUFF, YOU KNOW. AND WELL, YOU KNOW, I WAS - THEY HAD TO SHACKLE ME TO TAKE ME DOWN THERE. AND, YOU KNOW, I WAS TOLD AND THE CHARGES WAS READ AND HE LET ME OUT ON MY OWN - ON A PR. AND, YOU KNOW, I COULDN'T LEAVE THE HOUSE EXCEPT TO GO TO WORK. AND TO

[PATRICIA WILLIAMS 229]

TAKE THE KIDS TO SCHOOL.
Q. SO, SO YOU WENT HOME AFTER THE BOND HEARING?
A. YES, I DID.
Q. HOW DID YOU GET HOME?
A. MY COUSIN TOOK ME.
Q. OKAY. HOW DID YOUR COUSIN KNOW TO COME AND GET YOU?
A. WELL, SINCE THEY ALL KNEW I WAS GOING TO GO IN FRONT OF THE JUDGE, A LOT OF MY FAMILY MEMBER CAME AND, YOU KNOW, AND I - A BUNCH OF THEM WENT BACK HOME WITH ME AFTER EVERYTHING WAS OVER.
Q. AND HOW DID YOU FEEL AT THAT TIME?

A. LIKE A NOBODY. BUT WITH MY FAMILY, LIKE MY FAMILY BEING THERE, YOU KNOW, IT HELPED, BUT THEN IT WAS ALSO EMBARRASSING. YOU KNOW, BUT, THROUGH THE WHOLE ORDEAL, YOU KNOW, I JUST MADE ME FEEL LIKE A NOBODY.
Q. IN CONNECTION WITH YOUR ARREST, DID YOU RECEIVE ANY SUBSTANCE ABUSE TREATMENT?
A. IN CONNECTION WITH MY ARREST?
Q. YES.
A. WELL, FIRST OF ALL I COULDN'T TAKE MY BABY HOME WITH ME. AND SO THE ONLY WAY I COULD GET HIM BACK WAS TO GO TO. OUTPATIENT.
Q. AND DID YOU DO THAT?
A. YEAH, I WENT TO OUTPATIENT.
Q. HOW LONG DID YOU GO?

[PATRICIA WILLIAMS 230]

A. I FORGET HOW MANY WEEKS IT WAS SUPPOSED TO LAST. BUT, YOU KNOW, BEFORE - BEFORE I COMPLETED THAT, YOU KNOW, I WASN'T BEING FAIR TO MYSELF OR MY BABY, SO I REQUESTED TO GO TO CHAPS INPATIENT PROGRAM.
Q. WHEN YOU SAY YOU WEREN'T BEING FAIR TO YOURSELF, WHAT DID YOU MEAN?
A. I WAS LIKE CHEATING.
Q. WHAT DOES THAT MEAN?
A. I WAS LIKE USING STILL.
Q. EVEN THOUGH YOU WERE GOING TO TREATMENT?

A. UMM-HMM.
Q. WHAT KIND OF TREATMENT WERE YOU GOING TO?
A. IT WAS OUTPATIENT, YOU KNOW. YOU GO EVERY MORNING AND THEN YOU GET OUT AND COME BACK HOME THAT EVENING.
Q. WAS IT IN CONNECTION WITH THAT TREATMENT THAT YOU SAY YOU WERE CHEATING?
A. YES.
Q. AND WHAT DID YOU DO THEN?
A. WELL, WHEN I WENT IN ONE MORNING - ONE MORNING I WENT IN AND SPOKE TO ONE OF THE LADIES AND TELL THEM THAT I WANTED TO GO TO CHAPS BAKER THE INPATIENT PROGRAM THAT THEY HAVE FOR 28 DAYS.
Q. WHO MADE ARRANGEMENTS FOR THAT?
A. ONE OF THE LADIES THAT WORK AT OUTPATIENT. AND SO SHE CALL THEM AND THEY TOLD ME THAT I COULD COME THAT NIGHT OR

[PATRICIA WILLIAMS 231]

THAT MORNING, THE NEXT MORNING. SO I TOLD THEM THAT I WOULD COME THE NEXT MORNING.
Q. AND WERE YOU ABLE TO MAKE ARRANGEMENTS FOR YOUR CHILDREN?
A. YES.
Q. AND DID YOU GO?
A. YES.
Q. DOES YOUR - DO THE EVENTS THAT YOU HAVE DESCRIBED HAVE ANY CONTINUING EFFECT ON YOU?

A. WELL, YEAH, IT DID, BECAUSE LIKE I MEAN IT JUST - IT JUST FOLLOWED ME BECAUSE I WAS WORKING AT THE SHIPYARD, NAVAL SHIPYARD, AND THEY USUALLY DO A CLEARANCE. AND I ALMOST LOST MY JOB BEHIND THE SAME INCIDENTS THAT WAS SUPPOSED TO HAVE BEEN ERASED FROM MY RECORD. AND I HAD TO HIRE ME A LAWYER AND EVERYTHING TO GET ALL OF THAT CLEARED. AND -

Q. DO YOU RECALL HOW MUCH YOU PAID FOR THE LAWYER?

A. I THINK I PAID ABOUT EIGHT HUNDRED DOLLARS, I'M NOT REALLY SURE. ABOUT SIX TO EIGHT HUNDRED.

Q. ANY OTHER EFFECTS THAT THE EVENTS THAT YOU DESCRIBED CONTINUE TO HAVE ON YOU?

A. WELL, UMM, THEY SAID THAT - REPEAT THE QUESTION AGAIN.

Q. ANY OTHER EFFECTS THAT THE EVENTS THAT YOU HAVE JUST DESCRIBED CONTINUE TO HAVE ON YOU TODAY?

A. WELL, - WELL SOME LIKE POSITIVE EVENTS, YOU KNOW, LIKE - I'LL NOT SAY THAT.

Q. I'M SORRY, I JUST DIDN'T HEAR WHAT YOU SAID?

[PATRICIA WILLIAMS 232]

A. I'LL NOT SAY THAT, BECAUSE I DON'T KNOW WHETHER I CAN OR NOT. SO I WAS GOING TO EXPLAIN THE SITUATION BETWEEN ME AND MY CHILD.

Q. NO. YOU DESCRIBED IN YOUR TESTIMONY THAT - THAT YOU HAD A TUBAL LIGATION?
A. YES.
Q. WHAT WAS THAT FOR?
A. OKAY. AFTER I WAS - WHEN I WAS USING AND STUFF THEY WANTED ME TO HAVE A TUBE LITIGATION AND I LIKE, YOU KNOW, THEY GAVE ME THE CONSENT FORM AND IT WAS PUT TO ME LIKE, YOU KNOW, WHETHER I SIGNED OR NOT, YOU KNOW, IT WAS GOING TO BE DONE.
Q. WHAT – WHEN YOU SAY IT WAS PUT TO YOU, WHO ARE YOU TALKING TO?
A. SHIRLEY BROWN.
Q. TELL ME AGAIN.
A. OKAY. THEY - SINCE I USED DRUGS AND STUFF THEY FEEL THAT I SHOULD HAVE MY TUBES TIED SO I WON'T HAVE ANYMORE CHILDREN. AND - AND, YOU KNOW, I - I WAS SORT OF LIKE UNDECIDED. BUT SINCE IT WAS LIKE I DIDN'T HAVE ANY RIGHTS, YOU KNOW, I WENT ON AND SIGNED, YOU KNOW, BECAUSE I WAS TOLD WHETHER I AGREED OR SIGNED OR NOT IT WAS GOING TO BE DONE ANYWAY.
Q. BY WHOM?
A. SHIRLEY BROWN.
(PAUSE.)

* * *

MS. DUNN: I BELIEVE THAT I HAVEN'T SEEN WHAT Y'ALL ARE PUTTING IN, WHAT YOU CONSIDER THAT. WE HAVE BEEN GOING BACK AND FORTH WITH IT.

THE COURT: GO RIGHT AHEAD.

MS. SHOWERS: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MS. SHOWERS:

Q. YOU FIRST STARTED USING COCAINE IN 1990, CORRECT?

A. I BELIEVE SO.

Q. COULD YOU TALK JUST A LITTLE LOUDER.

THE COURT: LEAN UP. WE HAVE GOT THE MICROPHONE FIXED. I'M SORRY THE CHAIR WON'T PULL UP, BUT YOU'RE GOING TO HAVE TO SIT ON THE FRONT OF IT AND GET UP TO THAT MIKE. THE JURY ADVISED THE COURT REPORTER AT THE RECESS THAT THEY WERE HAVING DIFFICULTY HEARING YOU. AND SO LET'S SPEAK INTO THE MIKE.

THE WITNESS: OKAY.

Q. (BY MS. SHOWERS, CONTINUING) AND YOU USED COCAINE THROUGHOUT YOUR PREGNANCY WITH TEVON, CORRECT?

A. YES.

Q. IN FACT, YOU INCREASED YOUR USE OF COCAINE DURING YOUR PREGNANCY, CORRECT?

A. WELL, I CAN'T REALLY SAY. I KNOW I USED.

Q. HERE IS YOUR DEPOSITION.

A. OKAY.

[PATRICIA WILLIAMS 237]

Q. WOULD YOU TURN TO PAGE 78, PLEASE.
A. 78. OKAY.
Q. ACTUALLY AT THE BOTTOM OF PAGE 77 THE QUESTION WAS, "AND CORRECT ME IF I'M WRONG YOU SAID THAT YOU USED MORE COCAINE THAN YOU HAD BEEN USING AFTER YOU GOT PREGNANT?"
AND YOUR ANSWER AT LINE 2 WAS, "SEEMS THAT WAY, YEAH." IS THAT CORRECT?
A. REPEAT THAT.
Q. YES, MA'AM. AT THE BOTTOM OF PAGE 77 STARTING AT LINE 24?
A. UH-HUH.
Q. THE QUESTION WAS, "AND CORRECT ME IF I'M WRONG, YOU SAID THAT YOU USED COCAINE - YOU USED MORE COCAINE THAN YOU HAD BEEN USING AFTER YOU GOT PREGNANT?"
AND YOUR ANSWER AT THAT TIME ON MAY 24, 1994, WAS "SEEMS THAT WAY"?
A. "SEEMS THAT WAY."
Q. YEAH.
A. YEAH.
Q. DO YOU SEE THAT?
A. YEAH, I SEE.
Q. AND THAT WAS YOUR ANSWER?
A. UMM-HMM.
Q. IS THAT A YES?
A. YES.

[PATRICIA WILLIAMS 238]

Q. THANK YOU.
DID YOU NOT VOLUNTARILY GO FOR SUBSTANCE ABUSE TREATMENT ON YOUR OWN DURING YOUR PREGNANCY, DID YOU?
A. NO.
Q. AND WHEN YOU CAME TO MUSC, YOU KNEW ABOUT THE POLICY OF TESTING PREGNANT WOMEN FOR DRUGS AND REPORTING THEM TO THE POLICE, DIDN'T YOU?
A. NO. HU-UH. NO, I DIDN'T. WHEN I WENT TO MUSC I WENT THERE BECAUSE I KNEW I HAD A PROBLEM THAT I COULDN'T HANDLE BY MYSELF AND I WENT THERE SEEKING HELP.
Q. BUT YOU KNEW ABOUT THE POLICY AT MUSC THAT TESTED WOMEN FOR COCAINE, DIDN'T YOU?
A. WELL, NOT - WELL - WELL ALL I KNEW IS THAT I HEARD THAT IF YOU WANTED HELP TO GO TO MUSC.
Q. WOULD YOU TURN TO PAGE 81 OF YOUR DEPOSITION, PLEASE.
A. YES.
Q. AT LINE 11 I ASKED YOU, "YOU WERE NOT AWARE OF A POLICY AT THE MEDICAL UNIVERSITY TO TEST WOMEN FOR THE PRESENCE OF DRUGS?"
AND YOUR ANSWER AT LINE 14 WAS, "I HEARD ABOUT IT, YEAH."
DO YOU RECALL THAT?
A. WELL, I GUESS I - I GUESS I MUST HAVE SAID IT BUT I CAN'T REALLY REMEMBER.
Q. THAT WAS YOUR ANSWER?

[PATRICIA WILLIAMS 239]

A. YEAH, IT WAS THE ANSWER.
Q. AND WHEN YOU ARRIVED AT MUSC FOR THE FIRST TIME ON JANUARY 15, 1992, YOU WERE ASKED TO SIGN A CONSENT FORM, CORRECT?
A. YES.
Q. IS THAT YOUR SIGNATURE?
A. YES, IT IS.
MS. SHOWERS: DEFENDANTS' EXHIBIT 1.
DEPUTY CLERK: DEFENDANTS' EXHIBIT 1.
Q. (BY MS. SHOWERS, CONTINUING) AND YOU VOLUNTARILY ADMITTED TO THE MEDICAL UNIVERSITY STAFF AT THAT TIME THAT YOU WERE USING COCAINE, DIDN'T YOU?
A. YES.
Q. AND MS. BROWN CAME AND SPOKE TO YOU, DIDN'T SHE?
A. YES.
Q. AND SHE ASKED YOU TO SIGN A LETTER FROM THE SOLICITOR CHARLIE CONDON; IS THAT RIGHT?
A. SHE TOLD ME TO SIGN IT.
Q. IS THAT YOUR SIGNATURE?
A. YES, IT IS.
MS. SHOWERS: DEFENDANTS' 128.
THE COURT: YOU'RE OFFERING THAT?
MS. SHOWERS: YES, SIR.
THE COURT: NO OBJECTION.
MS. DUNN: NO OBJECTION, YOUR HONOR.

[PATRICIA WILLIAMS 240]

Q. (BY MS. SHOWERS, CONTINUING) AND YOU WERE ALSO SHOWN A VIDEO ON THE HARMFUL EFFECTS OF COCAINE ON YOUR DEVELOPING BABY WEREN'T YOU?
A. WELL I DON'T RECALL.
Q. IS THAT YOUR SIGNATURE?
A. YES, IT IS.
MS. SHOWERS: YOUR HONOR, I OFFER DEFENDANTS' EXHIBIT 117 INTO EVIDENCE.
MS. DUNN: WITHOUT OBJECTION.
Q. (BY MS. SHOWERS, CONTINUING) THIS IS A FORM THAT SAYS THAT YOU HAVE SEEN A VIDEO ON SUBSTANCE ABUSE AND HAVE BEEN ADVISED OF THE RISK TO MYSELF AND MY BABY. I UNDERSTAND THAT THE MEDICAL UNIVERSITY MEDICAL CENTER STAFF IS WILLING TO ASSIST ME IN OBTAINING ASSISTANCE FOR DRUG ABUSE, CORRECT?
A. RIGHT.
Q. WOULD YOU LIKE TO SEE IT AGAIN? HAVE I READ THAT CORRECTLY?
A. YEAH, I GUESS YOU DID READ IT CORRECTLY.
Q. I'M SORRY?
A. YES.
Q. AND THAT IS YOUR SIGNATURE?
A. THAT IS MY SIGNATURE.
Q. AND MS. BROWN CAME AND SPOKE TO YOU AND SHE EXPLAINED TO

YOU THAT USING DRUGS WHILE YOU WERE PREGNANT WOULD HARM YOUR BABY, DIDN'T SHE?

[PATRICIA WILLIAMS 241]

A. WELL, SHE EXPLAINED, YOU KNOW, ABOUT THE DRUG USES, YOU KNOW. AND LIKE I SAID, YOU KNOW, SHE WASN'T VERY PLEASANT ABOUT EXPLAINING IT.

Q. MY QUESTION WAS WHETHER OR NOT SHE EXPLAINED TO YOU THAT USING DRUGS WHILE YOU WERE PREGNANT WOULD HARM YOUR BABY?

A. UMM-HMM, YES, SHE DID.

Q. SHE DID.

SHE ALSO MADE AN APPOINTMENT FOR YOU, OR SOMEONE AT THE MEDICAL UNIVERSITY MADE AN APPOINTMENT FOR YOU AT CHARLESTON COUNTY SUBSTANCE ABUSE FOR JANUARY 22, 1992, CORRECT?

A. YES.

Q. BUT YOU DIDN'T GO?

A. NO.

Q. YOU DIDN'T GO BECAUSE IT WAS RAINING?

A. IT WAS RAINING, I DIDN'T HAVE TRANSPORTATION AND DIDN'T HAVE NOBODY TO KEEP THE CHILDREN.

Q. AND YOU CAME BACK TO MUSC ON JANUARY 30, 1992, CORRECT?

A. I GUESS SO. I CAN'T REMEMBER THE DATES.

Q. AND YOU TESTED POSITIVE AGAIN FOR COCAINE AT THAT TIME?

A. YES.

Q. YES?
A. I GUESS SO.
Q. AND, AGAIN, SOMEONE AT MUSC MADE ANOTHER APPOINTMENT FOR YOU AT CHARLESTON COUNTY SUBSTANCE ABUSE COMMISSION FOR

[PATRICIA WILLIAMS 242]

FEBRUARY 3, 1992, DIDN'T THEY?
A. I DON'T RECALL.
Q. IF THE MEDICAL RECORD REVEALS THAT THEY DID, WOULD YOU DISPUTE THAT?
A. PARDON ME?
Q. IT'S IN EVIDENCE. IF THE MEDICAL RECORDS REVEALS THAT YOU DID, WOULD YOU DISPUTE THAT?
A. NO, I WOULDN'T DISPUTE IT.
Q. I'M SORRY?
A. NO, I WOULDN'T.
Q. BUT YOU DIDN'T KEEP THAT APPOINTMENT EITHER, DID YOU?
A. I DON'T RECALL.
Q. YOU CAME BACK TO THE MEDICAL UNIVERSITY AGAIN ON FEBRUARY 14, 1992, CORRECT?
A. I GUESS. I CAN'T REMEMBER THE DATES.
Q. WELL YOU TESTED POSITIVE AGAIN ON FEBRUARY 14TH, DIDN'T YOU?
A. I GUESS SO.
Q. YOU CAME BACK AGAIN ON THE 24TH AND TESTED POSITIVE FOR COCAINE AGAIN, DIDN'T YOU?
A. I GUESS.
Q. MS. BROWN CAME AND TALKED TO YOU AGAIN ABOUT THE MEDICAL

RISKS TO YOU AND YOUR BABY CAUSED BY YOUR CONTINUED DRUG USE, CORRECT?
A. I DON'T RECALL. MAYBE SHE DID.

[PATRICIA WILLIAMS 243]

Q. IN FACT, YOU TESTED POSITIVE FOR COCAINE AT ALL SIX OF YOUR PRENATAL VISITS TO MUSC, DIDN'T YOU?
A. I PROBABLY DID.
Q. AND YOU NEVER ONCE WENT TO SUBSTANCE ABUSE ON YOUR OWN?
A. UNTIL AFTER.
Q. AND YOU NEVER ONCE WENT TO ANY SUBSTANCE ABUSE APPOINTMENT MADE FOR YOU BY THE MEDICAL UNIVERSITY?
A. WELL, NO, I DIDN'T MAKE IT TO IT.
Q. AND YOU DIDN'T GO BECAUSE YOU TOLD ME THEY WERE INCONVENIENT. DO YOU RECALL TELLING ME THAT?
A. THAT IT WAS WHAT?
Q. INCONVENIENT?
A. YES, AT THE TIME I PROBABLY DID SAY THAT.
Q. AND THEN YOU WERE ADMITTED TO MUSC FOR THE DELIVERY OF TEVON ON MARCH 10, 1992. DO YOU RECALL THAT?
A. YES.
Q. AND YOU USED DRUGS THE NIGHT BEFORE YOU DELIVERED TEVON? DO YOU REMEMBER THAT?
A. YES.
Q. AND WHEN I TOOK YOUR DEPOSITION, YOU TOLD ME THAT MUSC

DID NOT TREAT YOU LIKE A CRIMINAL; ISN'T THAT TRUE?
A. PARDON ME?
Q. YOU TOLD ME THAT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA DID NOT TREAT YOU LIKE A CRIMINAL, DO YOU RECALL THAT?
A. NO, I DON'T RECALL THAT.

[PATRICIA WILLIAMS 244]

Q. COULD YOU TURN TO PAGE 139. THE QUESTION ACTUALLY BEGINS ON PAGE 138. QUESTION WAS, "JUST TELL ME TO THE BEST OF YOUR RECOLLECTION WHAT YOU REMEMBER?"
A. WHAT WAS THAT?
Q. THE QUESTION IS ON PAGE 138. YOUR ANSWER IS ON PAGE 139. OKAY. START - STARTING AT LINE 10, YOUR ANSWER WAS, "AND I HAD JUST HAD A TUBAL LIGATION AND EVERYTHING AND, YOU KNOW, I FED TEVON EVERY DAY. I WAS THERE. IT WASN'T LIKE I WAS A CRIMINAL. AND I WASN'T ALLOWED TO FEED THE BABY AND STUFF, YOU KNOW. I WAS TREATED LIKE NORMALLY -
A. RIGHT. YEAH. THAT WAS LIKE RIGHT AFTER I HAD HIM.
Q. "LIKE I DID WHEN I HAD NATASHA AND RICKY THERE"?
A. YES.
Q. IS THAT WHAT THAT SAYS?
A. YES.
Q. SO YOU WERE TREATED JUST THE SAME WAY?
A. AFTER I HAD HIM, YES.

Q. AND THEN YOU WERE, AT DISCHARGE, ARRESTED BY DETECTIVE WARING. DO YOU RECALL THAT?
A. YES.
Q. AND DETECTIVE WARING PUT THE HANDCUFFS ON YOU, PUT YOU IN A WHEELCHAIR AND PUT THE SHEET OVER YOUR HANDS. DO YOU RECALL THAT?
A. YES.
Q. SHE TOOK YOU DOWNSTAIRS AND PUT YOU INTO THE FRONT SEAT

[PATRICIA WILLIAMS 245]

OF HER CAR, CORRECT?
A. WELL SHE PUT - SHE PUT ME AND - YOU KNOW CUFFED ME AND EVERYTHING. AND SHIRLEY BROWN PROCEEDED TO TAKE ME OUT OF THE ROOM.
Q. WHEN YOU GOT TO DETECTIVE WARING'S CAR, SHE PUT YOU IN THE FRONT SEAT OF THE CAR, CORRECT?
A. YES.
Q. AND YOU WEREN'T MISTREATED AT ANY TIME BY THE POLICE, WERE YOU?
A. NOT THAT I CAN RECALL.
Q. THEY LET YOU USE THE PHONE?
A. YES.
Q. YOU DIDN'T REQUIRE ANY MEDICAL ATTENTION WHILE YOU WERE IN THE CUSTODY OF THE POLICE, CORRECT?
A. PARDON ME?
Q. YOU DIDN'T REQUIRE ANY MEDICAL ATTENTION WHILE YOU WERE IN JAIL?

A. WELL, I WAS - NO, I DIDN'T REQUIRE ANY MEDICAL ATTENTION.
Q. AND YOU WENT TO JAIL THURSDAY AND YOU WERE RELEASED ON FRIDAY, CORRECT?
A. TRUE.
Q. AND AT THE JAIL YOU TOLD THE JURY THAT THEY INVENTORIED YOUR POSSESSIONS. DO YOU REMEMBER THAT?
A. YES.

[PATRICIA WILLIAMS 246]

Q. AND AT THAT TIME YOU HAD TWELVE HUNDRED AND THIRTY-FOUR DOLLARS IN CASH IN YOUR POSSESSION; IS THAT RIGHT?
A. YES.
Q. BUT YOU'RE TELLING THIS JURY -
MS. DUNN: I DON'T KNOW WHAT THIS IS RELEVANT TO.
MS. SHOWERS: YOUR HONOR, SHE TOLD THE JURY THAT SHE COULDN'T GET TO SUBSTANCE ABUSE BECAUSE SHE COULDN'T HAVE TRANSPORTATION.
THE COURT: I OVERRULE THE OBJECTION.
Q. (BY MS. SHOWERS, CONTINUING) BUT YOU COULDN'T AFFORD TRANSPORTATION OR CHILDCARE TO GET TO A SUBSTANCE ABUSE TREATMENT CENTER TO HELP YOU AND YOUR BABY, IS THAT WHAT YOU TOLD THIS JURY?
A. YES.

Q. BUT YOU HAD TWELVE HUNDRED AND THIRTY-FOUR DOLLARS ON YOUR PERSON WHEN YOU WERE ARRESTED?
A. YES, I HAD JUST RECEIVED THAT BECAUSE - WELL I WORK AT THE SHIPYARD, AND THEN I HAD DONE GOT MY REFUND AND I JUST CASHED IT.
Q. YOU CONTINUED TO USE COCAINE AFTER YOU WERE RELEASED FROM JAIL; IS THAT RIGHT?
A. FOR A LITTLE WHILE, YES.
Q. AND YOU DID THAT BECAUSE YOU WERE BEING SPITEFUL, THAT'S WHAT YOU TOLD ME, DO YOU REMEMBER?
A. YES.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM GENERAL TRANSCRIPT
11/22/96

[GENERAL TRANSCRIPT 58]

MR. WHERRY: THANK YOU. THIS IS A LETTER FROM JOSEPH GOOD, GENERAL COUNSEL OF MUSC TO PAT HUDSON, SENIOR ASSISTANT ATTORNEY GENERAL IN SOUTH CAROLINA DATED DECEMBER 19TH OF '89. THE LAST THREE PARAGRAPHS READ:

"IF A WOMEN REFUSES TO ATTEND THE PRENATAL CARE AND OR THE CHARLESTON COUNTY DRUG ABUSE CLASS, SUCH NON-ATTENDANCE IS REPORTED TO THE CHARLESTON POLICE DEPARTMENT OR THE CHARLESTON COUNTY POLICE DEPARTMENT AND APPROPRIATE LEGAL ACTION IS TAKEN FROM THAT POINT.

THIS IS NOT A PERFECT PROGRAM AND I WOULD PREFER TO HAVE THE MOTHER SIGN AN INFORMED CONSENT FOR DRUG SCREEN AND FOR THE SAME PROCEDURE TO BE USED FOR HER CHILD. I WOULD ALSO PREFER THAT DSS BE NOTIFIED RATHER THAN LAW ENFORCEMENT. BUT THE REALITY IS THAT DSS CANNOT AT THIS TIME HANDLE THE VOLUME OF THIS TYPE OF CASE. NOTICES SENT TO DSS OVER THE PAST 12

MONTHS HAVE NOT BEEN SATISFACTORILY ADDRESSED.

THE OTHER WEAKNESS IN THIS PROGRAM IS THAT ALTHOUGH WE DO TEST CHILDREN WHO ARE REFERRED FROM OTHER FACILITIES, AS WELL AS THEIR MOTHERS, IF THEY MEET THE PROFILE, THE MAIN PROSECUTIONS HAVE BEEN AGAINST BLACK AND INDIGENT MOTHERS IN THE CHARLESTON AREA, WHICH TO THE UNEDUCATED OBSERVER WOULD APPEAR TO BE DISCRIMINATORY."

MR. HOOD: I WOULD LIKE TO PUBLISH THE ENTIRE DOCUMENT.

THE COURT: WHAT?

[GENERAL TRANSCRIPT 59]

MR. HOOD: I WOULD LIKE TO PUBLISH THE ENTIRE DOCUMENT.

GOOD MORNING. MY NAME IS BOBBY HOOD. THIS IS JOE GOOD, GOOD. JOSEPH C. GOOD, JR., IN-HOUSE ATTORNEY. HE IS GENERAL COUNSEL FOR THE MEDICAL UNIVERSITY. A FULL-TIME EMPLOYEE OF THE MEDICAL UNIVERSITY. I'M A PRIVATE LAWYER. WE'RE NOT RELATED.

IT'S A LETTER TO PAT HUDSON, WHO IS A LAWYER. SAYS SENIOR ASSISTANT ATTORNEY GENERAL. STATE ATTORNEY GENERAL'S OFFICE IN COLUMBIA. RE: MUSC POLICY ON MANAGEMENT OF DRUG ABUSE DURING PREGNANCY.

DEAR PAT: I HOPE THIS LETTER WILL FIND - I HOPE THIS LETTER FIND YOU AND YOUR FAMILY WELL AND READY FOR AN ENJOYABLE CHRISTMAS AND VERY PROSPEROUS NEW YEAR.

I HAVE TAKEN THE LIBERTY OF ENCLOSING THE MEDICAL UNIVERSITY OF SOUTH CAROLINA'S NEWLY ENACTED POLICY FOR THE MANAGEMENT OF DRUG ABUSE DURING PREGNANCY. AS YOU KNOW, THE NUMBERS OF EXPECTANT MOTHERS GIVING BIRTH TO DRUG ADDICTED BABIES HAS INCREASED DRASTICALLY WITHIN THE LAST FEW YEARS. BABIES BORN TO MOTHERS WHO HAVE TAKEN OR USED COCAINE OR OTHER TYPES OF DRUGS DURING PREGNANCY ARE USUALLY BORN PREMATURE AND THEIR CHANCE OF SURVIVAL IS QUITE SLIM. THOSE CHILDREN THAT DO SURVIVE ARE FREQUENTLY SEVERELY MENTALLY AND PHYSICALLY HANDICAPPED AND MANY CONTINUE TO BE WARDS OF THE STATE.

SEVERAL MONTHS AGO WE WERE CONTACTED BY SOLICITOR

[GENERAL TRANSCRIPT 60]

CONDON - REFERRING TO CHARLIE CONDON - WHO WANTED TO MEET WITH REPRESENTATIVES OF THE MEDICAL PROFESSION, THE DRUG ABUSE COUNSELLORS, SOCIAL WORKERS AND LAW ENFORCEMENT TO EDUCATE EACH OTHER AS TO THE SERIOUSNESS AND SEVERITY OF THIS PROBLEM

AND TO PLAN A UNITED ACTION TO ADDRESS IT. AT THE SUGGESTION OF LAW ENFORCEMENT AND THE SOLICITOR'S OFFICE AND ARMED WITH SECTION 20-7-510 OF THE SOUTH CAROLINA CODE OF LAWS -

THAT'S A CHILD ABUSE STATUTE, YOUR HONOR.

- THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WAS ASKED TO DEVELOP AND IMPLEMENT A MANAGEMENT PROGRAM FOR EXPECTANT MOTHERS WHO TESTED POSITIVE TO COCAINE OR OTHER SIMILAR DRUGS. THIS POLICY WAS NOT INTENDED TO BE PUNITIVE. AND WAS NOT TO BE EMPLOYED IN A DISCRIMINATORY MANNER.

THE COURT: JUST READ IT MR. HOOD.

MR. HOOD: EXPECTANT MOTHERS ADMITTED TO OUR FACILITIES WHO MET A CERTAIN PROFILE BASED ON OUR MEDICAL EXPERIENCE WERE DETERMINED TO HAVE GIVEN REASONABLE CAUSE TO MEDICAL OFFICIALS TO DO A BLOOD SCREEN ON THE PATIENT PURSUANT TO THE BLANKET CONSENT FORM SIGNED BY THE PATIENT UPON ENTRY INTO OUR FACILITIES. IF THE TEST RETURNED POSITIVE FOR COCAINE OR SIMILAR DRUGS, THE MOTHER WAS INFORMED THAT SHE MUST ATTEND THE PRENATAL COUNSELING. AN APPOINTMENT WAS MADE FOR HER AT THE CHARLESTON COUNTY SUBSTANCE ABUSE FACILITY.

THE PATIENT IS SHOWN A VIDEOTAPE AS TO THE DANGERS OF COCAINE USE AND ITS AFFECT ON UNBORN CHILDREN AND SHE SIGNS A FORM

[GENERAL TRANSCRIPT 61]

VERIFYING THAT SHE HAS VIEWED THE VIDEO ON SUBSTANCE ABUSE AND HAS TAKEN - SORRY. AND HAS BEEN ADVISED AS TO THE RISK TO HER AND TO HER BABY BY MEDICAL PERSONNEL OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA. SHE FURTHER SIGNS AN ACKNOWLEDGMENT WHEN HER APPOINTMENT WITH THE PRENATAL CLINIC WILL BE AND HER APPOINTMENT WITH THE CHARLESTON COUNTY SUBSTANCE ABUSE AGENCY. SHE IS FURTHER GIVEN A DIRECTIVE BY CAPTAIN R. H. ROBERTS OF THE CHARLESTON POLICE DEPARTMENT INFORMING HER OF THE CRIMINAL ASPECTS OF HER COCAINE USE AND A COPY OF THE PERTINENT STATUTE. SHE IS ALSO GIVEN AND SIGNS FOR A WARNING FROM SOLICITOR CONDON AS TO THE IMPORTANCE OF HER ATTENDING THE PRENATAL AND DRUG ABUSE FACILITY AND THE DANGER TO HERSELF AND HER CHILD SHOULD SHE NOT FOLLOW THIS PREVENTATIVE PROGRAM.

AND THE LETTER CONCLUDES - THE NEXT PARAGRAPHS HAVE ALREADY BEEN READ. I AM AWARE THAT GREENVILLE MEMORIAL

HOSPITAL HAS A SIMILAR PROGRAM AND I WOULD BE CURIOUS TO KNOW . WHETHER THEY HAVE ENCOUNTERED ANY OBJECTIONS TO THEIR PROGRAM. SINCERELY JOE GOOD, GENERAL COUNSEL. AND WITH THE ENCLOSURES.

THANK YOU VERY MUCH.

MR. WHERRY: WE CALL SANDRA POWELL, PLEASE, YOUR HONOR.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM GENERAL TRANSCRIPT
12/10/96

[GENERAL TRANSCRIPT 482]

MR. WHERRY: THEN I DO, SIR, BECAUSE HE IS LEAVING OUT WORDS AS HE IS READING.

THE COURT: WE'LL CORRECT THAT. WE'LL CORRECT THAT, BUT YOU JUST MAKE AN OBJECTION. LET'S GO BACK AND YOU START AT THAT PARAGRAPH.

MR. HOOD: I THINK THIS IS, AS I'M READING IT AHEAD NOW, I THINK THIS PARAGRAPH HAS BEEN READ ANYWAY. I'M GOING TO START AT THE NEXT PARAGRAPH.

THE COURT: WHICH ONE IS THAT?

MR. HOOD: THIRD PARAGRAPH, PAGE 1.

THE COURT: DO YOU NEED YOUR GLASSES?

MR. HOOD: THE CONTACTS ARE BIFOCAL, BUT SOMETIMES THEY GET SCREWED UP, AND PARTICULARLY FAR AWAY.

IT MAY BE OF SOME INTEREST TO THE RESIDENT STAFF TO HAVE SOME FURTHER INFORMATION ON THOSE PATIENTS WHO HAVE

TESTED POSITIVE IN RECENT WEEKS. THE FIRST PATIENT ARRESTED FROM OUR OB SERVICE WAS M.Y. THIS IS HER FIFTH ARREST FOR DRUG-RELATED OFFENSES AND SHE IS KNOWN WELL BY THE POLICE DEPARTMENT AS MULTIPLE OTHER MEMBERS OF HER FAMILY HAVE ALSO BEEN ARRESTED, AND SHE HAS TWO BROTHERS CURRENTLY JAILED FOR COCAINE DISTRIBUTION. SHE HAS BEEN CHARGED WITH BOTH THE MISDEMEANOR OF COCAINE POSSESSION BUT ALSO THE FELONY OFFENSE OF DISTRIBUTION TO A MINOR. THE PUBLIC DEFENDER, MICHAEL O'CONNELL, WHO HAS GREAT INTEREST IN THIS CASE HAS DECIDED THAT HE WILL NOT PERSONALLY DEFEND M.Y. BUT HAS REASSIGNED IT

[GENERAL TRANSCRIPT 483]

TO ONE OF HIS LOWER-RANKING PUBLIC DEFENDERS, PRESUMABLY BECAUSE HE DOES NOT WISH THAT THIS PATIENT BE THE TEST CASE. M.Y. CONTINUES IN JAIL AWAITING DELIVERY.

NEXT PARAGRAPH. THE SECOND PATIENT ARREST WAS L.G. AS YOU ARE AWARE, SHE HAS BEEN DELIVERED AND THE BABY HAS BEEN PLACED WITH A FOSTER FAMILY WHILE DSS INVESTIGATES THE POSSIBILITY OF THE GRANDMOTHER BEING RESPONSIBLE FOR THIS BABY. SHE WAS IN THE JAIL CHARGED WITH THE FELONY OF

POSSESSION FOR DISTRIBUTION TO A MINOR. BUT SINCE DELIVERY HAS RECEIVED A HEARING ONLY ON MISDEMEANOR CHARGE OF NEGLECT. AT THE TIME OF HER HEARING, SHE INFURIATED THE JUDGE BECAUSE OF REPEATED LYING AND ULTIMATELY CLAIMED THAT SHE WOULD CONTINUE TO DO WHAT SHE WANTS WITH HER LIFE. SHE ALSO WOULD NOT TESTIFY AS TO THE SOURCE OR AMOUNT OF HER INCOME, AND IT IS PRESUMED THAT SHE PROBABLY ALSO IS A COCAINE DISTRIBUTOR. THE INVESTIGATION INDICATES THAT SHE HAS A RELATIVELY GOOD INCOME FOR NO - FROM NO APPARENT SOURCE. THE JUDGE FINED HER CHILD SUPPORT AND ORDERED HER INTO SUBSTANCE ABUSE CLINIC. IF SHE GOES TO SUBSTANCE ABUSE CLINIC ALL OF HER FELONY AND MISDEMEANOR CHARGES WILL BE DROPPED, AND IF NOT, THE FELONY CHARGES WOULD BE INSTITUTED. SHE WAS RELEASED OPEN HER PERSONAL RECOGNIZANCE, WHICH CURIOUSLY THE PUBLIC DEFENDER TRIED TO BLOCK.

NEXT PARAGRAPH. THE PATIENT MOST RECENTLY ARRESTED EK, AND DISCUSSED AT OUR MEETING WAS A WOMAN WITH VERY LIMITED

[GENERAL TRANSCRIPT 484]

PRENATAL CARE ARRIVING AT THE MEDICAL UNIVERSITY AT 33 WEEKS

GESTATION. THE DECISION WAS MADE NOT TO PERFORM URINE DRUG SCREEN, HOWEVER, THE BABY WHO DELIVERED DEVELOPED IRREGULAR HEART RATE, JITTERINESS AND DIFFICULTIES TO CONSOLE AND HAD -

MR. WHERRY: OBJECTION. THE WORD IS DIFFICULTY.

MR. HOOD: DIFFICULT TO CONSOLE, AND HAD STRONGLY POSITIVE URINE DRUG SCREEN FOR COCAINE. AT THAT POINT THE URINE DRUG SCREEN ON THE MOTHER WAS NEGATIVE. AT THE TIME OF HER ARREST SHE WAS CHARGED WITH UNLAWFUL NEGLECT AND DSS IS CURRENTLY INVESTIGATING THE SITUATION FOR A DECISION ON CUSTODY. AGAIN, THE SOLICITOR PLANS TO DROP CHARGES AGAINST THE MOTHER IF SHE SUBMITS TO MANDATORY SUBSTANCE ABUSE.

MR. WHERRY: OBJECT, THE LAST WORD IS TREATMENT.

THE COURT: AGAIN, THE SOLICITOR PLANS TO DROP CHARGES AGAINST THE MOTHER IF SHE SUBMITS TO MANDATORY SUBSTANCE ABUSE TREATMENT. MR. HOOD LEFT OFF THE WORD TREATMENT.

MR. HOOD: THANK YOU. THE LETTER GOES ON. AND I BELIEVE THAT THE REST OF IT HAS BEEN READ.

WE'LL NOW RECALL SHIRLEY BROWN TO THE STAND.

THE COURT: COME BACK AROUND, MS. BROWN. I INSTRUCT,

YOU THAT YOU ARE STILL UNDER OATH.

***

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPTS FROM GENERAL TRANSCRIPT
1/6/97

[GENERAL TRANSCRIPT 1222]

THE COURT: ANYTHING ELSE FROM THE DEFENDANT?
MR. HOOD: NO THANK YOU.
THE COURT: ANYTHING FROM THE PLAINTIFF?
MS. PALTROW: NO, SIR.
THE COURT: I'M SORRY ABOUT THE SKINNER CASE. MY MIND HAS BEEN JOGGED ON IT, AND I DO KNOW WHAT YOU MEAN BY SPECIAL NEEDS. AND OF COURSE THAT CASE HAD TO DO - AND SPECIAL NEEDS SEARCHES ARE NOT POLICE SEARCHES AND THEY'RE NOT GENERALLY IMPLICATED BY THE FOURTH AMENDMENT. AND TO GET TO THE POINT THAT I HAVE GOTTEN IN THIS CASE I HAVE ALREADY GOTTEN OVER THAT AND SAID THAT THIS IS A FOURTH AMENDMENT SEARCH.
SPECIAL NEED SEARCHES HAVE TO DO WITH ATHLETES THAT ARE TESTED FOR DRUGS, BUT THEY'RE NOT TURNED OVER TO THE POLICE. IN THE SKINNER CASE, THE RAILROAD TESTED PEOPLE BECAUSE OF EXTREMELY HIGH INCIDENCES OF DRUG USE AND ACCIDENTS

WITH TRAINS, AND THEREFORE DEVELOPED A POLICY TO TEST ALL - I GUESS ENGINEERS AND FIREMEN AND WHO WERE IN CONTROL OF A TRAIN AFTER AN ACCIDENT. BUT IN THAT PARTICULAR CASE THEY DID NOT TURN THEM OVER TO THE POLICE.

I THINK KIND THE SKINNER CASE, IF I RECALL CORRECTLY, ON SOME RARE OCCASIONS THEY WERE SUBPOENAED BY THE POLICE. BUT IT CERTAINLY WAS NOT A ROUTINE MATTER AND THOSE SEARCHES, IF WE CAN CALL THEM SEARCHES, WERE DONE FOR TOTALLY INDEPENDENT PURPOSES FROM POLICE PURPOSES. AND WHAT I FOUND

[GENERAL TRANSCRIPT 1223]

IN THIS CASE, RIGHTLY OR WRONGLY, IS - IS THAT THAT IS NOT THE CASE HERE. THAT THESE SEARCHES WERE NOT DONE BY THE MEDICAL UNIVERSITY FOR INDEPENDENT PURPOSES. IF THEY HAD BEEN THEN THEY WOULD NOT IMPLICATE THE FOURTH AMENDMENT.

OBVIOUSLY AS I POINT OUT THERE ON PAGE 4, NORMALLY URINE SCREENS AND BLOOD TESTS AND THAT TYPE THING CAN BE TAKEN BY HEALTH CARE PROVIDERS WITHOUT HAVING TO WORRY ABOUT THE FOURTH AMENDMENT. THE ONLY REASON THE FOURTH AMENDMENT IS IMPLICATED HERE IS THAT THE POLICE CAME IN AND THERE WAS AN

AGREEMENT REACHED THAT THE POSITIVE SCREENS WOULD BE SHARED WITH THE POLICE. AND THEN THE SCREEN IS NOT DONE INDEPENDENT OF POLICE, IT'S DONE IN CONJUNCTION WITH THE POLICE AND THAT IMPLICATES THE FOURTH AMENDMENT.

AND IT SAYS THAT YOU CAN'T DO IT UNREASONABLY. AND OF COURSE UNREASONABLY MEANS THAT YOU CAN'T DO IT WITHOUT A WARRANT OR SOME OTHER REASON. SAME AS WHAT WE RUN INTO IN THE CRIMINAL AREA, PLAIN VIEW, EXIGENT CIRCUMSTANCES, ETCETERA, TERRY STOPS AND THAT TYPE THING. BUT IN THIS PARTICULAR CONTEXT I THINK WE'RE DEALING WITH AN ENTIRELY DIFFERENT THING FROM WHAT WE'RE DEALING WITH SPECIAL CIRCUMSTANCES. BUT, I AM FAMILIAR WITH THOSE CASES AND I DID RULE.

OKAY. NOW, WHAT ABOUT - WHAT ABOUT - IN THE CHARGE I HAVE GENERALLY USED THE WORD REASONABLE SEARCH. AND I HAVEN'T DEALT WITH THE WORD, SEIZURE THAT MUCH. IN MY EXPERIENCE I HAVE ALWAYS USED THE WORD SEIZURE UNDER THE

[GENERAL TRANSCRIPT 1224]

FOURTH AMENDMENT AS AN ARREST. AND WE HAVE USED AN UNREASONABLE SEIZURE IS WHEN YOU ARREST SOMEBODY AND YOU

EXERCISE UNREASONABLE FORCE IN CONDUCTING THAT ARREST.

I DID ONE DAY THIS WEEKEND READ A CASE THAT DISTINGUISHED BETWEEN THE SEARCH AND THE TAKING OF INFORMATION AS BEING A SEARCH AND A SEIZURE. AND SO YOU COULD USE IT EITHER WAY IN THIS CASE, BUT WHEN I USE THE WORD SEARCH, I MEAN THE TAKING OF THE URINE SAMPLE AND THE TESTING OF THAT URINE SAMPLE, I DON'T KNOW WHY YOU HAVE TO USE SEARCH AND SEIZURE BUT YOU CAN USE EITHER ONE. OR BOTH. AND I DON'T KNOW THAT IT MAKES ANY DIFFERENCE. I HAVEN'T REALLY REACHED ANY CONCLUSION ON THE DEFENSE OF QUALIFIED IMMUNITY. I'M SURE THAT YOU HAVE NOTED THAT IT'S NOT INCLUDED IN MY INSTRUCTIONS.

I HAVE FOUND SUBSTANTIAL AUTHORITY TO THE EFFECT THAT QUALIFIED IMMUNITY WOULD NOT BE AVAILABLE IF NOT SUBSTANTIAL OR SOME REASONABLE AUTHORITY THAT SAYS QUALIFIED IMMUNITY WOULD NOT BE AVAILABLE UNDER THE EQUAL PROTECTION CLAIM. I THINK IT WOULD BE AVAILABLE UNDER THE UNREASONABLE SEARCH AND SEIZURE CLAIM. I'M NOT GOING TO CHARGE IT INITIALLY BECAUSE I WOULD LIKE TO BE ABLE TO DETERMINE WITH SOME DEGREE OF CLARITY EXACTLY WHY THE JURY IS DOING WHAT THEY

ARE DOING. AND I WOULD LIKE TO GET A DECISION FROM THEM ON THE FOURTH AMENDMENT CLAIM WITHOUT CLOUDING THAT DECISION WITH THE CONSIDERATION OF QUALIFIED IMMUNITY. BUT WHAT I MAY DO IS

[GENERAL TRANSCRIPT 1225]

IF THEY DO COME BACK AND THEY DO FIND FOR THE PLAINTIFFS OR ANY OF THE PLAINTIFFS ON THE FOURTH AMENDMENT CLAIM, I MAY THEN BIFURCATE THAT ASPECT OF IT AND CHARGE IT ON THE QUALIFIED IMMUNITY. THAT'S PROBABLY WHAT I WILL DO.

NOW WHETHER I WILL DO IT ON THE EQUAL PROTECTION CLAIM I'M NOT SURE. BUT IT JUST - I WANT TO KNOW WHAT THEY FIND ON THOSE CLAIMS AND NOT JUST THE BOTTOM LINE THAT WOULD INCLUDE A DECISION ON THE QUALIFIED IMMUNITY.

OKAY. ARE YOU READY TO GO? YOU WANT TO TAKE A MINUTE OR WHAT?

MS. PALTROW: NO, A MINUTE.

THE COURT: LET'S TAKE TEN MINUTES AND THEN WE'LL COME BACK.

(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)

THE COURT: I'LL HAVE A VERDICT FOR YOU. WE'LL LOOK AT IT BEFORE I GIVE IT TO THE JURY. IT'S KIND OF COMPLICATED

AND I DICTATED IT AND I WILL PROBABLY GET SOMETHING TYPED UP SHORTLY. AND WHENEVER I DO WE'LL START LOOKING AT IT AND I'LL GIVE IT TO YOU BEFORE WE SHOW IT TO THE JURY.

ONE THING THAT I DO NEED TO ADD TO MY CHARGE, IF YOU WANT THE CITY OF CHARLESTON LEFT IN, I HAVE GOT TO ADD SOME LANGUAGE IN THERE ABOUT THE ONLY WAY THEY CAN BE HELD IN IS IF IT IS SHOWN THAT CHIEF GREENBERG WAS A DECISION MAKER AND HIS DECISION TO BE INVOLVED IN THIS POLICY CONSTITUTED A POLICY OF THE CITY.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 3

Management of Drug Abuse During Pregnancy:
Review of the Current Policy

This is a DRAFT REPORT of a Meeting held January 9, 1990, in the vice President's Conference Room, Medical University of South Carolina, attended by:

For the Solicitor's Office: Charles M. Condon, Solicitor; Frampton Durban, Jr., Assistant Solicitor; Robert Bolchoz, Assistant Solicitor

For the Medical University of South Carolina: Dr. E. O. Horger, Maternal Fetal Care; Dr. V. DelBene, Medical Director; Shirley Brown, Nursing Coordinator, High Risk Obstetrics; Joe Good, Legal Counsel; Dr. Sarah Schuh, Pediatrics.

For the Department of Social Services: Nancy Worley, Program Director, Children, Family and Adult Services; Odessa Williams, Program Coordinator, Children Protective Services.

For the Charleston County Substance Abuse Commission: Dot Ellis.

The stated purpose of this meeting was to evaluate and revise the present policy concerning intervention in cases involving the use by pregnant women of cocaine during pregnancy, in light of the experience with that policy from its inception to the present. Medical University personnel note that statistics indicate that the policy appears to be having a

deterrent effect; with no significant decrease in the number of admissions or referrals, there has been only one positive drug screen identified since mid-December, 1989, following 12 referrals under the Cocaine screening policy from October 3, 1989 to December 1, 1989. Of the 12 cases referred under the Policy during that period, 8 were first identified following admission to the Hospital during labor, so there was no opportunity for the mother to enter drug treatment and avoid arrest prior to delivery.

The following amendments or revisions of the present Policy were suggested:

1. If a pregnant female tests positive for cocaine during a pre-natal visit, Medical University personnel will be responsible for:
   a. Presenting a film on the effects of drug usage during pregnancy to the patient, and.
   b. Having the patient execute the letter of agreement established by the original policy.

2. If a pregnant female tests positive for cocaine following a labor admission:
   a. Medical University personnel will report this fact to the Charleston County Department of Social Services under the mandatory reporting provision of the South Carolina Children's Code, as a report of suspected child abuse or neglect. This report will include the projected discharge date for the infant.
   b. DSS personnel will initiate an assessment based on the report from MUSC. If consistent with DSS policy, reports under this Policy

will be automatically classified as "founded" or "indicated."

c. DSS personnel will, as soon as possible after delivery, have the mother execute the Letter of Agreement provided by the current policy and will contact Substance Abuse to arrange for treatment.

d. If time permits based on the projected discharge date for the infant, DSS will attempt to locate a suitable family member for placement of the infant as an alternative to Emergency Protective Custody.

(1) If such a placement is available, a Services action will be initiated in lieu of Emergency Protective Custody.

(2) If such a placement is not available, or if time does not permit a full investigation into possible alternative placement, DSS will initiate an Protective Custody Action, either by Ex Parte Order or through Law Enforcement Emergency Protective Custody. Alternative placement will continue to be explored if available by the time of the Preliminary Hearing, within 10 days of Protective Custody.

3. Failure by the mother to execute the Letter of Agreement; to complete substance Abuse Counseling; to cooperate with DSS on alternative placement; or to maintain clean urine specimens consistent with the policies of the Charleston County Substance Abuse Commission will result in criminal prosecution consistent with the original Policy.

Participants wishing to revise or modify this Draft Report should contact Frampton Durban, Jr., Assistant Solicitor, at 724-0648.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 4

Medical University of South Carolina
March 1990

Management of Drug Abuse During Pregnancy

I. Identification of Drug Abuse

A. Pregnancies to be screened by urine drug testing:

1. No prenatal care
2. Late prenatal care after 24 weeks gestation
3. Incomplete prenatal care
4. Abruptio placenta
5. Intrauterine fetal death
6. Preterm labor "of no obvious cause"
7. IUGR "of no obvious cause"
8. Previously known drug or alcohol abuse
9. Unexplained congenital anomalies

B. Infants to be screened in both the well baby nursery and the newborn intensive care unit by urine or (meconium if possible) drug testing include those delivered following or with:

1. No maternal prenatal care
2. Late maternal prenatal care obtained after 24 weeks gestation.
3. Incomplete maternal prenatal care (fewer than five obstetrical visits)
4. Abruptio placenta
5. Preterm labor "of no obvious cause"

6. IUGR (SGA) "of no obvious cause"
7. Previously known maternal drug or alcohol abuse
8. Unexplained congenital anomalies
9. Clinical manifestations suggesting evidence of drug withdrawal

II. Education Efforts:

A. Prenatal visit (initial to clinic) or initial hospitalization:

1. Video presentation of harmful effects of drug abuse during pregnancy.
2. Written statement from OB service regarding harmful effects of drug abuse during pregnancy (see attached).
3. Statement to be signed by the mother, attesting that she has received counseling (see attached).

B. Protocol for follow-up after identification of drug abuse during pregnancy by positive urine drug screen:

1. The Case Manager for OB or designee will be notified by the resident of positive urine drug screen; on nights or holidays the Patient Care Coordinators will be notified.
2. Video presentation of harmful effects of drug abuse during pregnancy will be shown by nursing staff.
3. The Case Manager for OB or designee will give the written statement from OB service regarding harmful effects of drug abuse during pregnancy to the patient. (see attached).

4. Referral to Substance Abuse Clinic will be made by the OB Case Manager or designee and the OB clinic appointment will be made by the ward clerk. The OB Case Manager or designee will give the appointment letter to the patient. (see attached)

5. The OB Case Manager or designee will give the written statement from the solicitor's office to the patient. (see attached)

6. If any clinic appointments (substance abuse or OB clinic) are not kept, the police department will be notified. Substance abuse will notify the police department for any substance abuse appointments missed or positive urine drug screens obtained by them. (see attached statement from Captain Roberts).

7. If <u>any further</u> drug screens are positive, police department to be notified and patient will be arrested. (see attached statement from Captain Roberts)

C. Protocol for follow-up after identification of drug abuse for patient who has delivered an infant:

1. The neonatal Case Manager (or neonatologist) for outborn babies in the NICU and the obstetrical case manager for inborn NICU babies and 8 East Nursery will be notified by the resident in the respective nurseries of positive urine/meconium drug screens. On weekends or holidays the patient care coordinator will be notified.

2. The parent(s) will be given a written summary of the harmful effects of drug abuse during pregnancy and informed of the hospital

policy/procedure by case manager, neonatologist or patient care coordinator (see attached)

3. A referral will be made to the Department of Social Service Child Protective Services. (see attached statement from solicitor's office)

4. The Case Manager or designee will give the written statement from the solicitor to inborn babies mothers.

5. A SCAN report will be completed by a social worker with a copy placed on infant's chart and a copy sent to the Case Manager and SCAN coordinator.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 5

The State of South Carolina
[LOGO]
Solicitor, Ninth Judicial Circuit

SOLICITOR CHARLES MOLONY CONDON
CHARLESTON AND BERKELEY COUNTIES
COUNTY COURT HOUSE
POST OFFICE BOX 58
CHARLESTON, S.C. 29402-0058
TELEPHONE: 803-723-6714

October 18, 1989

Reference: Substance Abuse During Pregnancy

TO WHOM IT MAY CONCERN:

During your recent examination you tested positive for drugs. You have been counseled about the harmful effects of drugs to you and your baby and referred to Substance Abuse and Pre-Natal Care by the Medical University. By these referrals you are being afforded an opportunity to rehabilitate yourself for the good of yourself and your baby. Please understand that by using drugs during pregnancy you are risking death or at least severe long-term harmful effects to your baby. If you fail to attend Substance Abuse and Pre-Natal Care you will be arrested by Charleston City Police and prosecuted by the Office of Solicitor.

Sincerely yours,
/s/
Charles Molony Condon
Solicitor

CMC /aom

I have read and received a copy of the above letter.

_____	_____
PATIENT	WITNESS
DATE:_____	_____
	WITNESS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 6

The State of South Carolina
[LOGO]
Solicitor, Ninth Judicial Circuit

SOLICITOR CHARLES MOLONY CONDON
CHARLESTON AND BERKELEY COUNTIES
COUNTY COURT HOUSE
POST OFFICE BOX 58
CHARLESTON, S.C. 29402-0058
TELEPHONE: 803-723-6714

March 26, 1990

Reference: Substance Abuse During Pregnancy

TO WHOM IT MAY CONCERN:

During your recent medical examination conducted in connection with the birth of your child you tested positive for drugs. Before your release from the Hospital, you will be counseled on the harmful effects of drug usage to you and your child, and referred to Substance Abuse Counseling. This referral will give you the opportunity to rehabilitate yourself for the good of yourself and your child. A referral will also be made to the Charleston County Department of Social Services under South Carolina Child Protection Law. DSS will determine whether the best interests of your child require the removal of that child from your custody during your rehabilitation. If you fail to complete Substance Abuse Counseling, fail to cooperate with the Department of Social Services in the placement of your child and services to protect that child, or if you fail to maintain clean urine

specimens during your Substance Abuse rehabilitation, you will be arrested by the Police and prosecuted by the office of the Solicitor.

Sincerely yours,

Charles Molony Condon
Solicitor

CMC:fc

I have read and received a copy of this letter.

_____ Witness:_____
Patient

Date:_____ Witness:_____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 7

[LOGO]
Solicitor, Ninth Judicial Circuit
SOLICITOR DAVID PRICE SCHWACKE
CHARLESTON AND BERKELEY COUNTIES
POST OFFICE BOX 70100
NORTH CHARLESTON, S.C. 29415-0100
TELEPHONE: 803-740-5850
FAX: 803-740-5858

Reference: Substance Abuse During Pregnancy

TO WHOM IT MAY CONCERN:

During your recent examination you tested positive for drugs. You have been counseled about the harmful effects of drugs to you and your baby and referred to Substance Abuse and Pre-Natal Care by the. Medical University. By these referrals you are being afforded an opportunity to rehabilitate yourself for the good of yourself and your baby. Please understand that by using drugs during pregnancy you are risking death or at least severe long-term harmful effects to your baby. If you fail to attend Substance Abuse and Pre-Natal Care you will be arrested by Charleston City Police and prosecuted by the Office of Solicitor.

Sincerely yours,
/s/
David P. Schwacke
Solicitor

DPS/shg

I have read and received a copy of the above letter.

_____ _____

PATIENT WITNESS

DATE:_____ _____

WITNESS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 8

MUSC MEDICAL CENTER

I have seen a video on substance abuse and have been advised of the risks to myself and my baby. I understand that the MUSC Medical Center staff is willing to assist me in obtaining assistance for drug abuse treatment

Patient's Signature:_____

Patient's Social Security Number:_____

Date:_____

Witness' Signature:_____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 9

MUSC MEDICAL CENTER

Date: _____

To: _____
(Patient's Name)

_____
(Patient's Social Security Number)

From: Medical University of South Carolina Medical Center

During your recent examination you tested positive for drugs. These drugs may cause immeasurable harm to your unborn child. We have made an appointment for you at our Prenatal Clinic at_____o'clock on the_____day of_____, 19____. We have also made an appointment for you with the Charleston County Substance Abuse facility at_____at _____o'clock on the _____day of , 19___. We expect you to keep these appointments.

I have read and understand this and I agree to meet these appointments for my benefit and that of my unborn child.

_____(L.S.)
Patient's Signature

_____
Witness' Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 10

MEDICAL UNIVERSITY OF CAROLINA
Department of Obstetrics & Gynecology
Maternal and Fetal Medicine
(803) 792-2864

MUSC Medical Center [LOGO]
171 Ashley Avenue
Charleston, South Carolina 29425-2233

TO OUR PATIENTS:

The increasing use of street drugs, particularly Cocaine and crack, by pregnant women is a cause for great concern. The use of these drugs has been strongly associated with complications such as the death of the baby (stillbirth), premature delivery, bleeding due to the early separation of the afterbirth (abruptio placenta), retarded growth and mental development of the baby, and birth defects. Drug abuse during pregnancy is also associated with withdrawal symptoms and sudden death (SIDS) of the infant. It is very important that you understand the risks, not only to yourself, but also to your unborn baby if you are using drugs during pregnancy.

If you are using drugs, please stop! If you are unable to stop, please let your doctor know. We want to help mothers get off drugs for the benefit of both you and your baby. We will provide you counseling about the harms of drug abuse and will make arrangements for you to be seen at the Substance Abuse Clinic. We realize that drug abuse is a very difficult problem and we will do all that we can to help you.

If, however, we continue to detect evidence of drug abuse or a failure to follow recommended treatment, we will take action to protect your unborn child. The Charleston Police, the solicitor's office, and the Protective Service Division of DSS are also committed to the protection of unborn and newborn children from the harms of illegal drug abuse.

We hope that you can understand the tragedy which is being caused by the continued use of illegal drugs during pregnancy. This policy of providing warning, counseling and treatment for pregnant women using illegal drugs is the best way for us to help. For those women who fail this treatment, we must ask for help to protect the life and health of our most innocent unborn children

Sincerely,

Department of Obstetrics and Gynecology
Medical University of South Carolina Medical Center

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 11

CHLDREN'S HOSPITAL
Department of Pediatrics

DIVISION OF NEONATOLOGY
William B. Pittard III, M.D., Director
Abner H. Levkoff M.D.
Bruce W. Hollis Ph.D.
Thomas C. Hulsey. M.S.P.H., Sc.D.
Lakshmi Katikaneni, M.D.
Dilip Purohit, M.D.
Diane M. Anderson, M.S.R.D.
Bryan Ohning, M.D., Ph.D.
Celeste Patrick, M.D.
David J. Annibale M.D.
Paul C. Engstrom M.D.
Lawrence A. Wallin, M.D.
(803) 792-2112

MUSC Medical Center [LOGO]
MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina 29425-3313

Dear Parent:

Since your infant has been exposed to cocaine during your pregnancy it is important that you understand behaviors and/or problems that your infant may face. This letter is

intended to offer you tips to assist you in dealing with the infant.

The most significant problems for the babies of mothers using cocaine during pregnancy are decreased body and brain growth. Some reports of seizure activity as well as intestinal illness have also been made and abnormal bone, heart, and urinary system development has been reported in some babies.

Babies born to women who abuse cocaine throughout pregnancy can have small undergrown brains and may have abnormal brain function. They are fussy and irritable and feed poorly. These babies are frequently jittery and do not relate well to those taking care of them. Parents need to be aware that this unresponsive, fussy behavior is normal for these babies and is the way they respond to everyone, not just to their parents. If this behavior is noted, the pediatrician should be notified.

Finally, there is an increased incidence of sudden infant death among infants delivered to mothers who abuse cocaine. The incidence of sudden infant death in normal babies is about 2 in 1000. The incidence among neonates who are born to mothers who abuse cocaine is as high as 150 per 1000.

Thus, it is clear that cocaine use in pregnancy places the baby at very high risk for medical problems. The brain injury in the baby does not quickly heal and even after several months is still present. These infants require a great deal of patience from their parents and frequently special help from paramedical persons.

The nurses will go over the attached baby support techniques with you before the infant is discharged.

If you feel you need help with your baby after discharge and cannot find it, you can always call the Division

of Neonatology at 792-2480 and ask to talk with a neonatologist. He/she will make suggestions to you and direct you to support persons.

Sincerely,

Division of Neonatology

I. Poor Feeding

Wake infant every 3 hours to feed
Feed infants small quantities with increasing quantity per feeding overtime.
Allow infant to rest frequently during feeding
Feed infant in sitting position
After feeding, place infant on abdomen

II. Irritability and Difficulty in Sleeping

Keep the baby in a quiet room
Avoid bright lights
Wrap the baby firmly with a blanket
Carry infant in front-pack carrier
Rock infant slowly or walk with the baby
Offer the baby a pacifier
Warm bath
Respond to the baby's stress cues by stopping your activity when he is upset
On occasion soft music will help

III. Tremors

Wrap baby firmly and hold infant close
Hold infant in almost sitting position
with arms and shoulders forward... arms at midline
Hold infant so that arms and legs are close to body
Touch jittery areas firmly and calmly

IV. Stiffness and Rigidity

Bathe in warm water
Swaddle in flexion position with shoulders and arms close to body
Do not put the infant on its back

Breastfeeding

Cocaine is present in milk for at least 48 hours
Do not use cocaine or any drugs while breast-feeding

C: Rev. Coc

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

JOINT EXHIBIT # 14

MINUTES
HOSPITAL EXECUTIVE COMMITTEE
MUSC MEDICAL CENTER
NOVEMBER 27, 1989

MEMBERS:		REPRESENTED
Chairman, Executive Committee	P	Dr. Del Bene
Executive Director	P	Mrs. McCants
President, Medical Staff	P	Dr. Fitts
Director, Patient Care Services	P	Ms. Maguire
CHAIRMEN:		
Anesthesiology	P	Dr. Mahaffey
Dermatology	P	Dr. Maize
Family Medicine	P	Dr. Simpson
Medicine	R	Dr. Allen (MCKEE)
Neurology	P	Dr. Hogan
Neurosurgery	P	Dr. Perot
Obstetrics & Gynecology	P	Dr. Creasman
Ophthalmology	P	Dr. Apple
Oral & Maxillofacial Surgery/ Dentistry	P	Dr. DeChainplain
Orthopaedic Surgery	P	Dr. McGinty
Otolaryngology	A	Dr. Adkins
Pathology & Laboratory Medicine	P	Dr. Garvin
Pediatrics	R	Dr. Darby (LEVKOFF)
Physical Medicine & Rehabilitation	A	Dr. LeRoy
Psychiatry	P	Dr. Ballenger
Radiation Oncology	P	Dr. Jenrette
Radiology	R	Dr. Spicer (SCHABEL)

Surgery	P Dr. Crawford
Urology	P Dr. Turner

ALSO ATTENDING:

Dr. William Miller	Mrs. Candi Cooper
Dr. Ben Lawson	Ms. Rachel Herbert
Dr. John Manos	Mr. John Sanders
Dr. Stephen Schabel	Mr. John Cooper
Dr. Abner Levkoff	
Dr. Kelly McKee	
Mr. Fred Parker	

MINUTES
HOSPITAL EXECUTIVE COMMITTEE
MUSC MEDICAL CENTER
November 27, 1989 1:30 P.M.

CALL TO ORDER

I. ACTION ITEMS

A. Review and Approval of Previous Minutes

MOTION: To approve minutes as distributed.
ACTION: Approved by Committee.

B. Medical Committee Minutes

A synopsis of committee minutes was distributed and reviewed prior to this meeting. The summary is attached. The following items were discussed and presented for information and approval.

1. Accreditation Committee: 10/10/89
The Accreditation Committee identified areas during their mock surveys that are not performing quality assurance reviews properly. This could put our accreditation status in jeopardy. They also indicated that the Medical Center is not doing much with

regard to reviewing the quality of patient care in the out patient arenas.

2. Blood Usage Review Committee: 8/23/89
3. CPR Committee: 9/14/89
4. Critical Care Committee: 10/25/89
5. ICU Committee Minutes:
   a. Medicare: 9/14/89
6. Infection Control Committee: 9/19/89
   a. Dietary Services Policy Review and Revision

MOTION: To approve the revision of the Dietary Services Policy.

ACTION: Approved by Committee.

7. Medical Records Committee: 10/18/89

MOTION: To approve the following forms; Telemetry Form (revised); Post Anesthesia Care Unit Form (PACU) revised

8. Operating Room Committee: 9/20/89, 10/18/89
9. P & T Committee: 10/31/89

MOTION: Request approval for the following:

a. Drug study for prophylaxis of stress ulcers
b. Switch to Engerix-B vaccine as the only hepatitis-B vaccine on the Formulary. Request the following Formulary

Additions:

a. Ganciclovir (Cytovene ®) Anti CMV drug
b. Beclomethasone dipropionate nasal Spray-Anti-inflammatory topical nasal steroid
c. Zidovudine Syrup (Retrovir®)-Calcium channel blocker with increased ability to cross blood-brain barrier.

ACTION: Requests approved by Committee.

MUSC MEDICAL CENTER
November 27, 1989

C. Departmental Minutes

A synopsis of the following departmental; minutes was presented by Dr. Fitts and discussed by Committee. The summary is attached. No action was recommended.

1. Anesthesiology: Dept., 8/7/89, 9/28/89; M & M, 10/19/89
2. Dermatology: 9/20/89, 10/25/89
3. Family Medicine: Fac., 9/11/89; QA, 9/28/89, 10/26/89
4. Neurology: 10/12/89, 10/26/89
5. Ob-Gyn: QA, 10/25/89, 10/27/89
6. Oral & Max. Surgery: 10/9/89
7. Otolaryngology: 10/4/89, 10/25/89
8. Psychiatry: QA, 8/30/89, 10/17/89
9. Pathology & Lab. Medicine: 8/23/89; QA, June-Aug.'89
10. PM & R: 9/12/89
11. Radiology: 9/6/89, 11/1/89
12. Surgery: Dept, 9/18/89, 10/9/89; M & M, 9/15/89, 9/20/89, 10/27/89

D. Quality Assurance

A synopsis of Q. A. activities was distributed to and reviewed by Committee members prior to this meeting. The following was discussed and presented for approval.

A. Q. A. Committee, Minutes: November 1, 1989

B. Departmental QA: Reports:

1. Anesthesiology: 7/10/89, 8/7/89
2. Neurosurgery: 8/24/89
3. Ob-Gyn: 7/25/89, 8/9/89, 9/5/89
4. Orthopaedics: 3/21/89, 5/15/89, 6/6/89, 6/29/89, 8/1/89
5. Pathology & Lab. Medicine: 7/ 26/89, 8/23/89
6. Physical Medicine: 2/14/89, 3/14/89
7. Radiation Oncology: 5/25/89, 6/29/89, 7/27/89

MOTION: To approve minutes and studies as presented.

ACTION: Approved by Committee.

II. DISCUSSION ITEMS

A. Report of the Executive Director

Ms. McCants gave the following for information:
*Renovation update:
Scheduled openings - 6W, patients in December; 7W, turned over from contractor the end of December, available for patients 2-3 weeks after that; 9th floor, July 1990; 8W, March 1990; 3rd floor, March 1990, 2E will be rearranged to accommodate Radiology during their renovations;

A. Report of the Executive Director Continued

Ambulatory Surgery, February 1990; Low Risk OB to CMH, March 1990; 5th floor will not totally close, we will keep at least a ten bed ward. *We are still

recovering from HUGO and are working diligently to make repairs .

B. Report of the Director of Patient Care Services

Ms. Maguire indicated the Department is attempting to fill the case manager positions.
Dean Hoffman has appointed a Task Force with regarding
joint appointments with a report due out at the end of March.

C. Medical Record Delinquent Chart Count

November 1989	Currently 10 physicians without privileges
15-30 Days:	431 (29% of total)
> 30 Days:	941 (57% of total)

Dr. Del Bene reiterated that the medical record is the ultimate responsibility of the attending physician not the house officer.

D. Death & Autopsy Report: September 1989
Autopsy Rate: 45% Total Deaths: 31
Total Autopsies: 14

III. OLD BUSINESS

IV. NEW BUSINESS

A. Management of Drug Abuse During Pregnancy

This policy was distributed and reviewed by Committee prior to this meeting.

MOTION: To approve this policy for distribution throughout the MUSC-MC.

ACTION: Approved by Committee.

V. INFORMATION ITEMS

A. Quarterly Medical Staff Meeting: November 28, 1989, 7:30 AM

There being no further business, the meeting was adjourned.

Respectfully submitted,
/s/
Victor E. Del Bene, M.D.
Chairman

VDB/cjc

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 1

MEDICAL UNIVERSITY OF SOUTH CAROLINA
Department of Obstetrics & Gynecology
Maternal and Fetal Medicine
(803) 792-2864

[LOGO]
MUSC
Medical
Center
171 Ashley Avenue
Charleston, South
Carolina 29425-2233

June 30, 1989

MEMORANDUM

TO: OB/GYN Residents and MFM Staff

FROM: E. O. Horger III, M. D. /i/

RE: Cocaine Screening

The following obstetric admissions should have urine screening for cocaine:

1. No prenatal care
2. Abruptio placenta
3. Intrauterine fetal death
4. Preterm labor "of no obvious cause"
5. IUGR "of no obvious cause"
6. Previously known drug or alcohol abuse

EOH/fwm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 3

Office Mem [LOGO]
MOLONY CONDON
Judicial Circuit

SHIRLEY B. BROWN
Case Manager – Obstetrics
Medical University of South Carolina
171 Ashley Avenue
Charleston, S.C. 29425-2270
Telephone (803) 792-2127

TO: Charlie

FROM: Frank

SUBJECT: "Crack Babies"

1/89

I was @ the Med. U. the other day for a meeting w/Dr. Schuh & I Met a nurse who is the case manager for all cases admitted to the Hospital for Pre-Natal care. She knows all the statistics on"crack babies, etc. I believe she might be useful to us in our effort to form some policy on dealing w/mothers of "crack babies".

Please advise.

/i/

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 14

THE STATE OF SOUTH CAROLINA
[LOGO]
SOLICITOR, NINTH JUDICIAL CIRCUIT

SOLICITOR CHARLES MOLONY CONDON
CHARLESTON AND BERKELEY COUNTIES
COUNTY COURT HOUSE
POST OFFICE BOX 58
CHARLESTON, S.C. 29402-0058
TELEPHONE: 807-723-6714

October 24, 1989

Ms. Shirley Brown
RNMN Case Manager for OB
171 Ashley Avenue
Charleston, SC 29425

Dear Shirley:

Enclosed please find a draft of our policies that we discussed and several copies of the letter from our office to be presented to the mother who tests positive.

If you have any questions, please feel free to call me.

Sincerely,

Francis J. Cornely
Assistant Solicitor

FJC/jmb

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 19

MEDICAL UNIVERSITY OF SOUTH CAROLINA
Department of Obstetric & Gynecology
Maternal and Fetal Medicine
(803) 792-2864

MUSC [Logo]
MEDICAL CENTER
171 Ashley Avenue
Charleston, South Carolina 29425-2233

November 14, 1989

TO: OB/GYN Residents
FROM: Roger B. Newman, M. D.
RE: Drug abuse testing policy

This letter is in follow-up to the several very good questions raised at our recent discussion of our new policy regarding drug testing. The first question involves policies to be employed by Franklin C. Fetter, the various midwife clinics as well as the public health clinics. These policies which we have instituted at the Medical University will be conveyed to the staff at Franklin C. Fetter as well as to the various public health department midwife services. We will encourage them to initiate the same type of patient educational services as we are currently recommending here at MUSC. All obstetrical patients at MUSC whether private or public will receive the same educational material.

A second question regarded testing of patients in the 8-East exam room. Such testing would require specific patient consent because patients seen in the outpatient exam rooms who have not been seen through our prenatal clinics have not

consented to treatment at the Medical University. It would seem unlikely that such testing would be performed in the 8-East exam room as most of the indicators would be under conditions where hospitalization was likely. Dr. Gadsden informs us that the urine drug screen is a very effective test, that it is extremely reliable when it indicates positive screen but will occasionally miss the patient who has ingested such substances. The test will detect drugs for approximately 48 hours and we are assured that such drugs as Lidocaine or Marcaine will not cross-react with cocaine. It is important also to note that the neonatal nurseries will also be screening the urine of those babies born to mothers with the obstetrical indicators for drug abuse. We will address whenever possible the question of the treatment of those women arrested or in custody at the medical University Hospital. Obviously, these policies will ultimately be the determination of the police department but we will request flexibility in the treatment of these patients as much as possible. Similarly, we should attempt to see these patients as early as possible in the outpatient clinics so that they can be returned back to jail from clinic as soon as possible.

It may be of some interest to the resident staff to have some further information on those patients who have tested positive in recent weeks. The first patient arrested from our OB service was MY. This is her fifth arrest for drug-related offenses and she is known well by the police department as multiple other members of her family have also been arrested, and she has two brothers currently jailed for cocaine distribution. She has been charged with

both the misdemeanor of cocaine possession but also the felony offense of distribution to a minor. The public defender, Michael O'Connor, who has great interest in this case has decided that he will not personally defend MY but has reassigned it to one of his lower-ranking public defenders, presumably because he does not wish that this

patient be the test case. MY continues in jail awaiting delivery.

The second patient arrest was LG. As you are aware, she has been delivered and the baby has been placed with a foster family while DSS investigates the possibility of the grandmother being responsible for this baby. She was in the jail charged with the felony of possession for distribution to a minor, but since delivery, has received a hearing only on the misdemeanor charge of neglect. At the time of her hearing, she infuriated the judge because of repeated lying and ultimately claimed that she would continue to do what she wants with her life. She also would not testify as to the source or amount of her income, and it is presumed that she probably also is a cocaine distributor. The investigation indicates that she has a relatively good income from no apparent source. The judge fined her child support and ordered her into substance abuse clinic. If she goes to substance abuse clinic, all of her felony and misdemeanor charges will be dropped and if not, the felony charges would be instituted. She was released on her personal recognizance which curiously the public defender tried to block.

The patient most recently arrested, EK, and discussed at our meeting was a woman with very limited prenatal care arriving at the Medical University at 33 weeks' gestation. The decision was made not to perform urine drug screen; however, the baby who delivered developed irregular heart rate, jitteriness, was difficult to console, and had a strongly positive urine drug screen for cocaine. At that point, the urine drug screen on the mother was negative. At the time of her arrest, she was charged with unlawful neglect and DSS is currently investigating the situation for a decision on custody. Again, the solicitor plans to drop charges against the mother if she submits to mandatory substance abuse treatment.

We also received follow-up on a few patients with positive drug screens prior to the institution of this protocol. PM had

a positive urine drug screen for cocaine in August which was performed because of a lack of prenatal care. Her case was referred to DSS which was ineffectual. We know of her because of her child being re-hospitalized at one month of age with apnea and bradycardia as well as failure to thrive despite a full term gestational age and size. DSS has subsequently taken custody of the baby due to maternal neglect. Patient SB is a gravida 9, para 9 with 8 living children who had a positive urine drug screen in October. She may be remembered as the woman who refused to skip breakfast in order to have a tubal ligation. DSS referral was also ineffectual despite our request immediate evaluation. This patient was arrested on November 8 when police were called to her home when the children were reported as being unattended by a neighbor. The 8 children were found alone in the house. The mother was arrested for cocaine possession at another location. DSS has again subsequently taken custody of all the children and is considering placement of the children with the father.

Page 3

I do not present these case reports to justify the current policies that we are recommending at the Medical University as the weakest form of any argument is anecdotal case histories. I have no intention of continuing to provide follow-up on all women arrested at the Medical University. I present these cases solely to demonstrate how painfully sad and difficult this situation of drug abuse during pregnancy is. I believe it must be very difficult for anyone to claim the ethical, moral, or intellectual high ground in such a complicated scenario which involves protecting the rights, health, and future of fetuses, mothers, and newborns.

I would like to again reiterate the goals not only of the obstetrical department of the Medical University of South Carolina but also the goals of the police department and solicitor's office. Namely those goals are to first educate as many patients as possible regarding the harmful effects of

any and all drug abuse during pregnancy. Secondly, if despite education drug abuse is documented in a currently pregnant women, an effort will be made to institute a change in this lifestyle through education, counseling, and a mandatory attendance at substance abuse clinic. Thirdly, if a patient who is known to abuse drugs during pregnancy fails to comply with this treatment plan or is noted to be abusing drugs immediately preceding delivery, then she will be taken into custody by the Charleston City Police and charged with the various offenses described by the solicitor's office. While this may be considered punitive, again I urge you to understand that the purpose behind this is primarily to insure that DSS becomes involved in follow-up of that infant as well as providing the criminal justice system an opportunity to investigate the situation and probably in most instances to again mandate substance abuse treatment as a prerequisite for resuming maternal relationship with the child.

Thank you very much for your consideration and understanding of this policy.

Sincerely,

/s/

Roger B. Newman, M. D.

RBN/fwm

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 44

OBSTETRICS	GYNECOLOGY
CLINICAL GENETICS	GYNECOLOGIC ONCOLOGY
ULTRASONOGRAPHY	REPRODUCTIVE ENDOCRINOLOGY
MATERNAL/FETAL MEDICINE	UROGYNECOLOGY
	RESEARCH

UNIVERSITY [LOGO] OF SOUTH CAROLINA
SCHOOL OF MEDICINE
Department of Obstetrics and Gynecology
Two Richland Medical Park, Suite 208
Columbia, South Carolina 29203
(803) 765-7243

October 26, 1990

Charles M Condon
Solicitor, Ninth Judicial Circuit
PO Box 58
Charleston, South Carolina 29402-0058

Dear Charles:

Enclosed is a copy of the recent issue off the Journal of the South Carolina Medical Association. Our article on "Cocaine in Pregnancy" appears as the lead article. I certainly appreciate your help in organizing and operating our program regarding the pregnant female.

In my discussions with Dr. Berry Campbell, the senior fellow in Maternal Fetal Medicine at MUSC, I understand that the number of cocaine positive urine drug screens increased in the past few months. However, I also understand that there has not been any need for any further arrests in that each patient has gone ahead with substance abuse counseling.

We have not initiated such a urine screening program here at RMH. I have discussed our protocol with several groups and in a couple of conferences here, and it was received quite well by all. I really am waiting until we can do something with the statewide screening project before going any further locally. It is very apparent that the SCMA has become quite interested in the problem and I hope that we can get something done on a statewide basis.

Thanks again for all of your cooperation.

Sincerely,

/s/

Edgar O. Horger III, MD
Professor of Obstetrics and Gynecology
Division of Maternal-Fetal Medicine

EOH/tp

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT 83a

CHARLES MOLONY CONDON
Office Memorandum Solicitor. Ninth Judicial Circuit

To: Robert Hemphill DATE: April 2, 1991

FROM: Charles Condon, Solicitor /i/

SUBJECT: Payment for Social Worker/Researcher

Please consider this your authorization to fund the position of social worker researcher in the Substance Abuse in Pregnancy Program through the Ninth Circuit Charleston County Pre-Trial Intervention Program. This position involves the tracking of those individuals who have tested positive for drug abuse during pregnancy for the Medical University of South Carolina and the judicial system. It is to be funded without benefits at the rate of $10.00 per hour. Starting next month, in order to better track the women who are arrested in our "cocaine baby" program but are not prosecuted, we will enroll them in our PTI program. I expect all fees will be waived because of the indigency of most of these women

cc: Drug Strike Force & Child Abuse Unit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 92

AUTHORIZATION TO RELEASE INFORMATION
TO MEDICAL UNIVERSITY HOSPITAL

TO: _____

_____

_____
(Person, address where request is to be sent)

The undersigned does hereby authorize the above named person or agency to release medical records or other information as specified below to the following:

RETURN ADDRESS: _____

DEPARTMENT OF _____

MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 ASHLEY AVENUE
CHARLESTON, SOUTH CAROLINA 29425

RE: _____ _____
(Patient's name) (Birthdate)

The information to be released includes the following:

_____ discharge summary

_____ operative report

_____ pathology report

_____ other: _____

_____

This authorization is subject to revocation at any time. Without prior revocation, it will expire 90 days from the date below.

The party executing this authorization has a right to receive a copy of it.

_____
(Patient or legal representative)

Dated this _____ day of _____, 19___

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFFS' EXHIBIT # 94

[LOGO]
MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina 29425

AUTHORIZATION FOR RELEASE OF INFORMATION
FROM MEDICAL RECORDS

The undersigned does hereby authorize the MUSC Medical Center to release to _____
_____ copies of medical records,
(Name of Person/Company to
Whom Records are to be Released)

Address _____

_____

or portions thereof as shown below, of _____
(Patient/Client's Name)
Date of Birth _____

who was admitted to the aforesaid hospital on _____
and discharged on _____ (Date)
(Date)

I understand that this information may include reference to psychiatric care, sexual assault, alcohol abuse and/or drug abuse and results of tests for all infectious diseases including AIDS/HIV.

The portion of the medical record to be released is the following: _____

The purpose or need for this disclosure is: ____
_____

This authorization is subject to revocation at any time. Without prior revocation, this authorization will automatically expire one year from the date hereof.

The party executing this authorization has a right to receive a copy of it.

_____
(Signature of Patient or Legal Guardian)

Date this _____day of _____, 19___

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 126

DEPARTMENT OF FAMILY MEDICINE
(803) 792-2411
Family Medicine Unit
(803) 792-3451
Fax (803) 792-3598

[LOGO]
MEDICAL UNIVERSITY OF
SOUTH CAROLINA
171 Ashley Avenue
Charleston South Carolina
29425-5820

MEMORANDUM

TO: Faculty, Residents, and Staff

FROM: Dena Clair, RN /i/

DATE: November 1, 1993

RE: MUSC Policy Regarding Substance Abuse in Pregnancy

I have recently had many questions related to this policy. Bottom line is that the policy does apply to Family Medicine and is to be followed.

Our role is to:

1. identify those who meet criteria for screening by urine drug screen. ** consent form must be signed

2. provide education requiring substance abuse in pregnancy. Patients are to be referred to me to view video, sign statement, etc.

3. refer to Shirley Brown RN, Case Manager OB/GYN or OB clinic if urine screen positive for cocaine only

   - If the patient is here in the office, notify Ms. Brown at that time. She will come over to see the patient (beeper 1500).

   - If the patient is not here, refer to the OB clinic. Indicate positive UDS and that patient is to see Ms. Brown.

We can continue to follow our patients if discussed with Ms. Brown and if we agree to follow protocol regarding appointments for OB visit and substance abuse.

If you have any questions, please call me. A copy of the policy will be at each nursing station.

DC/tab

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 127

Department of Family Medicine
(803) 792-2411
Family Medicine Unit
(803) 792-3451
Fax (803) 792-3598

[LOGO]
MEDICAL UNIVERSITY OF
SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina
29425-5820

M E M O R A N D U M

TO: John Sanders
Hospital Administrator

FROM: Barry L. Hainer, M.D. /i/
Associate Chair for Clinical Services
Dena Clair, R.N. /i/
Patient Educator

DATE: March 3, 1994

RE: Implementation of MUSC Policy M-7:
Substance Abuse in Pregnancy

In order to implement and comply with the policy, the Family Medicine Center will:

1. inform all residents, faculty, and clinical staff of the policy by memorandum and by follow-up discussion at patient care meetings.

2 include a copy of the consent for treatment in the OB packet that is placed on record at the time of the initial OB visit. Physician or nursing staff will be responsible for reviewing and having the consent signed.

3. refer all OB patients to Dena Clair, R.N., for routine prenatal patient education which includes substance abuse counselling, viewing of substance abuse video, signing of statement that the patient has received counselling and letter from OB service. If the consent form has not been signed, it will be done at this visit also. When possible, a same day appointment will be offered at the convenience of the patient or as soon as possible after initial OB visit. Referral may be initiated by M.D., nursing staff, or clerical staff.

4. establish a policy to allow R.N.s to order UDS if patient meets criteria.

5. review OB charts monthly to determine if the following policy regarding identification of patients who meet criteria referral for patient education, etc. If not, notation is made on the patient's record. Dr. Hainer will be informed of physicians who do not comply with this policy. Mrs. Clair will participate in OB chart review.

cc: Laurann Litchfield, R.N.
Nurse Supervisor

A. Cleve Hutson, M.D.
Chairman

Jeff Conklin
Business Manager

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 128

DEPARTMENT OF FAMILY MEDICINE
(803) 792-2411
Family Medicine Unit
(803) 792-3451
Fax (803) 792-3598

[LOGO]
MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina 29425-5820

MEMORANDUM

TO: Residents, Faculty, and Clinical Staff

FROM: Barry L. Hainer, MD /i/
Dena Clair, RN /i/

DATE: March 10, 1994

RE: MUSC Policy Regarding Substance Abuse in Pregnancy

The purpose of this memo is to remind each of you that the Family Medicine Center is to comply with this MUSC policy. Our role in doing so is as follows:

1. Identify those who meet criteria for urine drug screen (UDS)

    - No prenatal care
    - Late prenatal care after 24 weeks

- Incomplete prenatal care
- IUGR "of no obvious cause"
- Previously known alcohol or drug abuse
- Abruptio placentae
- IUFD
- Preterm labor "of no obvious cause"
- Unexplained congenital anomalies

UDS may be ordered by the MD or RN. The consent form MUST be signed prior to doing so.

2 Refer all OB patients to Dena Clair for routine prenatal counselling which includes substance abuse counselling required by policy.

3. Refer patients with positive UDS (cocaine only) to Shirley Brown, RN, MSN Case Manager, for OB/GYN .

- if the patient is here in the office, page Ms. Brown (Beeper 1500). She will come here to see the patient.
- if the patient is not here, refer to the OB clinic. Indicate on the consult positive UDS and that patient is to see Ms. Brown.

We may continue to follow our patients if discussed with Ms. Brown and if we agree to follow the protocol regarding appointments for OB care and substance abuse.

A copy of the policy is at each nursing station.

DC/tab

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 225

COLLEGE OF NURSING [LOGO]
MEDICAL UNIVERSITY OF SOUTH CAROLINA
171 Ashley Avenue
Charleston, South Carolina
29425-2402

MEMORANDUM

TO: Nurse-Midwives and Staff
Rutledge Avenue Clinic

FROM: Kathleen M. Higgins /i/
Director of Nursing Services

DATE: March 23, 1994

RE: Drug Abuse Film

I have been asked to assure our compliance with the directives of Medical University Hospital in regards to orientation of maternal clients to risks of drug use during pregnancy.

Please incorporate an opportunity for each prenatal patient to view the video tape supplied by John Sanders and request that each client read and sign the attached form.

If there is any anticipated difficulty complying with this directive, please respond as soon as possible.

lrp

POLICY M-7

SUBJECT: MANAGEMENT OF DRUG ABUSE DURING PREGNANCY

MUSC MEDICAL CENTER

I have seen a video on substance abuse and have been advised of the risks to myself and my baby. I understand that the MUSC Medical Center staff is willing to assist me in obtaining assistance for drug abuse treatment.

Patient's Signature: _____

Patient's Social Security Number: _____

Date: _____

Witness' Signature: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

PLAINTIFF'S EXHIBIT # 258

MANAGEMENT OF DRUG ABUSE DURING PREGNANCY

PURPOSE:

Pregnant women abusing illegal drugs is a growing problem that poses potentially fatal consequences for the unborn child. This threat to human life has necessitated police intervention in those instances where pregnant females have rejected opportunities to voluntarily obtain assistance in stopping their abuse of dangerous drugs.

POLICY:

The MUSC Medical Center will cooperate with the City Of Charleston Police Department and courts of law in reporting pregnant women who have tested positive for illegal drugs. The following criteria will be used to determine who will be screened for urine drug testing:

A. Pregnancies to be screened by urine drug testing:

1. No prenatal care
2. Late prenatal care after 24 weeks gestation
3. Incomplete prenatal care
4. Abruptio placentae
5. Intrauterine fetal death
6. Pre-term labor "of no obvious cause"
7. IUGR "of no obvious cause"
8. Previously known drug or alcohol abuse
9. Unexplained congenital anomalies

B. Infants to be screened in both the well baby nursery and the newborn intensive care unit by urine or (meconium if possible) drug testing include those delivered following or with:

1. No maternal prenatal care
2. Late maternal prenatal care after 24 weeks gestation
3. Incomplete maternal prenatal care (of fewer than five obstetrical visits)
4. Abruptio placenta
5. Pre-term labor "of no obvious cause"
6. IUGR (SGA) "of no obvious cause"
7. Previously known maternal drug or alcohol abuse
8. Unexplained congenital anomalies
9. Clinical manifestations suggesting evidence of drug withdrawal

The MUSC Medical Center will provide the following educational information concerning drug abuse to patients on their initial visit to a clinic or initial hospitalization:

1. Video presentation of harmful effects of drug abuse during pregnancy.
2. Written statement from OB service regarding harmful effects of drug abuse during pregnancy (see attached).
3. Statement to be signed by the mother, attesting that she has received counselling (see attached).

The following protocol will be followed after identification of drug abuse during pregnancy by positive urine drug screen:

1. The Case Manager for OB or designee will be notified by the resident of positive urine drug screen; on nights or holidays the Patient Care Coordinators will be notified.

2. Video presentations of harmful effects of drug abuse during pregnancy will be shown by nursing staff.

3. The Case Manager for OB or designee will give the written statement from OB service regarding harmful effects of drug abuse during pregnancy to the patient (see attached).

4. Referral to Substance Abuse Clinic will be made by the OB Case Manager or designee and the OB clinic appointment will be made by the ward clerk. The OB Case Manager or designee will give the appointment letter to the patient. (see attached)

5. The OB Case Manager or designee will give the written statement from the solicitor's office to the patient. (see attached)

6. If any clinic appointments (substance abuse or OB clinic) are not kept, the police department will be notified. Substance abuse will notify the police department for any substance abuse appointments missed or positive urine drug screens obtained by them. (see attached statement from Captain Roberts).

7. If any further drug screens are positive, police department to be notified and patient will be arrested. (see attached statement from Captain Roberts)

Protocol for follow-up after identification of drug abuse for patient who has delivered an infant:

1. The neonatal Case Manager (or neonatologist) for out-born babies in the NICU and the obstetrical case manager for inborn NICU babies and 8 East Nursery will be notified by the resident in the respective nurseries of positive urine/meconium drug screens. On weekends or holidays the patient care coordinator will be notified.

2. The parent(s) will be given a written summary of the harmful effects of drug abuse during pregnancy and informed the hospital policy/procedure by case manager, neonatologist or patient care coordinator (see attached).

3. A referral will be made to the Department of Social Service Child Protective Services. (see attached statement from the solicitor's office)

4. The Case Manager or designee will give the written statement from the solicitor to inborn babies mothers.

5. A SCAN report will be completed by a social worker with a copy placed on infant's chart and a copy sent to the Case Manager and SCAN coordinator.

If a patient presents themselves for care at the MUSC Medical Center and has failed to keep scheduled appointments for pre-natal care and/or substance abuse therapy, MUSC personnel will notify the Detective Division of the Police Department. A criminal report will be made and an arrest warrant issued for the accused.

The arrest will be made at the patients discharge. The Nurse Case Manager will notify MUSC Security and Hospital Administration of the arrest. A MUSC officer will escort the representative from the police department to the patient. The Director of Family Clinical Services will be present to represent the hospital during the hours of 8:00 am to 5:00 pm. Any arrest made during the remaining hours will be attended by a Patient Care Coordinator. The PCC will alert the Administrator on call of the arrest. The Director of Family Clinical Services and the PCC are to insure that proper procedure is being used and that the patient is escorted out of the hospital in an inconspicuous manner.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

DEFENDANT'S EXHIBIT # 156

How the Policy at MUSC Worked if Urine tested Positive for Cocaine

1. General Consent form signed at admission.
2. Video reviewed and letter signed.
3. If met criteria, UDS performed.
4. If UDS positive:
   a) shown video again;
   b) met with OB Case Manager;
      1) Harmful effects of cocaine explain;
      2) Hx taken;
      3) Explained requirement to report positive UDS and offer of amnesty by Solicitor
      4) Solicitor letter reviewed and signed;
      5) Appointment made at Substance Abuse Treatment Center for evaluation.
5. If Patient failed to successfully complete substance abuse treatment or returned to MUSC with another positive UDS during prenatal care or at delivery, OB Case Manager would report to the police as reporting statute required.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

[Title Omitted in Printing]

EXCERPT OF JURY CHARGE 1/6/97

[JURY CHARGE 17]

IN OTHER WORDS, THE EVIDENCE MUST AT LEAST REASONABLY LEAD YOU TO THE INFERENCE THAT THE DEFENDANTS POSITIVELY OR TACITLY CAME TO A MUTUAL UNDERSTANDING TO TRY TO ACCOMPLISH A COMMON AND IMPROPER PLAN.

LET'S LOOK MORE CLOSELY NOW AT THE CONSTITUTIONAL CLAIMS AND WHAT IS NECESSARY TO BE SHOWN FOR THERE TO BE A VIOLATION OF THE FIRST THE FOURTH AMENDMENT AND THEN NEXT THE FOURTEENTH AMENDMENT.

AS I STATED EARLIER, THE FOURTH AMENDMENT STATES IN PERTINENT PART THAT THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED. THE FOURTH AMENDMENT, WHICH I JUST READ, USUALLY FOCUSES ON POLICE ACTION. WHEN WE RUN INTO THE FOURTH AMENDMENT, WE ALMOST ALWAYS DO IT WHERE A POLICE OFFICER HAS MADE AN IMPROPER SEARCH OR AN IMPROPER SEIZURE OF PROPERTY. A SEARCH OR SEIZURE WITHOUT A WARRANT.

NORMALLY ON THE OTHER SIDE OF THE COIN, PERSONNEL WORKING IN A HEALTH CARE FACILITY, SUCH AS THE MEDICAL. UNIVERSITY OF SOUTH CAROLINA, COULD ROUTINELY TEST A PATIENT'S URINE OR TEST A PATIENT'S BLOOD OR PERFORM OTHER DIAGNOSTIC TESTS WITHOUT BEING SCRUTINIZED UNDER THE FOURTH AMENDMENT. BUT WHAT MAKES THIS CASE UNUSUAL AND WHAT BRINGS IT WITHIN THE COVERAGE OF THE FOURTH AMENDMENT IS THE FACT THAT YOU HAVE LAW ENFORCEMENT AND MEDICAL SERVICE PEOPLE ACTING TOGETHER.

IT IS THE FACT THAT THE SO-CALLED SEARCH, THE TAKING

[JURY CHARGE 18]

OF THE URINE SAMPLE AND THE TESTING OF IT FOR COCAINE, WAS TO BE USED NOT ONLY FOR MEDICAL DIAGNOSIS, BUT IF IT WAS POSITIVE IT WAS ALSO GOING TO BE USED FOR POLICE AND PROSECUTORIAL PURPOSES. IT IS THAT CONCERT, THAT JOINING TOGETHER BY THESE TWO GROUPS OF PEOPLE TO PERFORM THIS SEARCH THAT BRINGS IT WITHIN THE SCOPE OF THE FOURTH AMENDMENT.

THE FOURTH AMENDMENT SPEAKS OF UNREASONABLE SEARCHES AND SEIZURES. USUALLY WHEN WE SPEAK OF UNREASONABLE SEARCHES AND SEIZURES WE ARE SPEAKING OF SEARCHES AND SEIZURES WHERE

THERE IS NOT A SEARCH WARRANT. THERE ARE, HOWEVER, UNDER OUR LAW, A NUMBER OF RECOGNIZED EXCEPTIONS TO THAT RULE. THERE ARE A NUMBER OF CASES IN WHICH A WARRANTLESS SEARCH AND SEIZURE CAN BE REASONABLE UNDER THE FOURTH AMENDMENT TO THE CONSTITUTION.

THERE WERE NO SEARCH WARRANTS IN THIS CASE. THERE WERE SOME SEARCH WARRANTS ISSUED LATER IN THE PROSECUTION TO OBTAIN MEDICAL RECORDS, BUT THERE WERE NO SEARCH WARRANTS ISSUED BY A MAGISTRATE OR ANY OTHER PROPER JUDICIAL OFFICER TO PERMIT THESE URINE SCREENS TO BE TAKEN. THERE NOT BEING A WARRANT ISSUED, THEY ARE UNREASONABLE AND IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, UNLESS THE DEFENDANTS HAVE SHOWN BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFFS CONSENTED TO THOSE SEARCHES.

NOW, THERE IS A LAW THAT HAS BEEN READ TO YOU HAVING TO DO WITH THE REPORTING OF CHILD ABUSE. IT'S SECTION

[JURY CHARGE 19]

20-7-510. THAT LAW IS SOMETHING THAT YOU CAN CONSIDER IN DETERMINING WHAT INTENT THE DEFENDANTS HAD WHEN THEY DID

WHATEVER THEY DID IN THIS CASE. AND I DON'T MEAN TO BE FACETIOUS WHEN I SAY THAT THEY DID WHATEVER THEY DID, BUT IT'S YOUR JOB TO FIND THE FACTS. AND WHEN YOU DO THAT, YOU WILL FIND WHAT EVERYBODY DID. AND THIS STATUTE IS RELEVANT TO SHOW THEIR INTENT AND WHY THEY DID WHAT THEY DID. YOU DON'T HAVE TO SAY THIS SHOWS THEIR INTENT, BUT IT IS JUST ONE OF THE FACTORS THAT YOU CAN CONSIDER IN THAT REGARD. BUT THIS STATUTE CANNOT GIVE SOMEONE THE RIGHT TO VIOLATE THE FOURTH AMENDMENT TO THE CONSTITUTION.

THE SEARCHES OF THE URINE IN THIS CASE WERE, AS I HAVE STATED, UNREASONABLE UNLESS THEY WERE CONSENTED TO. AND SO LET ME DISCUSS JUST A MOMENT WHAT WE MEAN BY CONSENT, BECAUSE IT IS CONCEDED BY THE PARTIES THAT IF THE SEARCHES WERE CONSENTED TO THEN THEY ARE CONSTITUTIONAL. AND AGAIN YOU MAY REACH A DIFFERENT CONCLUSION AS TO CONSENT FROM PLAINTIFF TO PLAINTIFF. THAT DOESN'T HAVE TO BE SO, THAT'S DICTATED BY THE FACTS. BUT IT DOESN'T MEAN THAT IF THERE IS CONSENT IN ONE CASE THAT THERE IS NECESSARILY CONSENT IN THE OTHER OR VICE VERSA. AGAIN, YOU HAVE TO LOOK AT THE FACTS THAT RELATE TO EACH PLAINTIFF AND REACH A DECISION ON THE QUESTION OF

CONSENT.

AS I HAVE STATED EARLIER, NOT ONLY IS IT NECESSARY THAT CONSENT BE SHOWN IN THIS CASE FOR THESE SEARCHES NOT TO

[JURY CHARGE 20]

BE IN VIOLATION OF THE CONSTITUTION, THE BURDEN IS ON THE DEFENDANTS' TO SHOW THAT. CONSENT IS A QUESTION OF FACT TO BE DETERMINED BY YOU. IT IS A QUESTION OF FACT TO BE RESOLVED IN THE LIGHT OF ALL OF THE CIRCUMSTANCES IN THE CASE. IT IS SOMETIMES SAID THAT YOU MUST LOOK AT THE TOTALITY OF THE CIRCUMSTANCES.

SOME OF THE FACTORS THAT YOU MIGHT TAKE INTO CONSIDERATION IN DETERMINING WHETHER OR NOT CONSENT TO THE SEARCH WAS GIVEN BY A PARTICULAR PLAINTIFF INCLUDES THE AGE OF THE - ONE OF THE PLAINTIFFS. HIS OR HER - OR HER LACK OF EDUCATION OR HER EDUCATION. HER INTELLIGENCE OR THE LEVEL HER INTELLIGENCE. THE LACK OF ANY ADVICE FROM AN ATTORNEY OR THE PRESENCE OF SUCH ADVICE.

THE MATTER OF CONSENT MORE OFTEN THAN NOT IS DISCUSSED IN TERMS OF VOLUNTARINESS AND WILLINGNESS TO GIVE

THE CONSENT. BUT BEFORE THERE CAN BE ANY VOLUNTARINESS, BEFORE THERE CAN BE ANY CONSENT, THERE MUST BE KNOWLEDGE. THE PERSON GIVING THE CONSENT MUST HAVE KNOWLEDGE OF WHAT SHE IS DOING. IT'S BASIC THAT BEFORE YOU CAN CONSENT TO SOMETHING

YOU HAVE GOT TO KNOW WHAT IT IS. YOU HAVE TO HAVE ENOUGH INFORMATION TO KNOW WHAT IS BEING DONE BEFORE YOU CAN CONSENT TO IT. AND THE SCOPE OF THE CONSENT MUST BE BROAD ENOUGH INCLUDE THE SEARCH IN QUESTION. CONSENT FOR ONE PURPOSE MAY BE BROAD ENOUGH TO COVER ONE ACTOR, BUT MAY NOT BE BROAD ENOUGH TO COVER ANOTHER ACTOR.

[JURY CHARGE 21]

THE WRITTEN CONSENT IN THIS CASE MAY BE SUFFICIENT TO COVER THE TAKING OF A URINE SAMPLE AND THE TESTING THEREOF BY MEDICAL UNIVERSITY OF SOUTH CAROLINA OFFICIALS ALONE, BUT IT IS NOT SUFFICIENT TO COVER THE SHARING OF THAT INFORMATION WITH LAW ENFORCEMENT OFFICIALS. THAT WRITTEN CONSENT IS NOT SUFFICIENT CONSENT TO WARRANT A SEARCH WHERE THE SEARCH INFORMATION IS FURNISHED TO LAW ENFORCEMENT OFFICERS. THERE MUST BE SOMETHING IN ADDITION TO THAT WRITTEN CONSENT BEFORE

YOU CAN SAY THAT THESE WERE CONSENT SEARCHES.

I'M NOT SUGGESTING OR SAYING THERE WAS NOT CONSENT. I'M JUST SAYING THAT THE WRITTEN DOCUMENT ITSELF DOES NOT CONSTITUTE SUFFICIENT CONSENT TO NOTIFY THESE PLAINTIFFS THAT THESE TESTS WILL BE TURNED OVER TO LAW ENFORCEMENT PEOPLE UNDER CERTAIN CONDITIONS. THEY HAD NO REASON FROM READING THE CONSENT TO KNOW THAT THE INFORMATION WOULD BE SHARED BY THE MEDICAL PEOPLE WITH THE LAW ENFORCEMENT PEOPLE. AND THEREFORE TO SHOW THAT THERE IS A VALID CONSENT IN THIS CASE THERE MUST BE SOMETHING ELSE THAT CONVINCES YOU THAT THE PLAINTIFFS CONSENTED NOT ONLY TO THE TAKING OF THIS URINE FOR THE USE BY THE MEDICAL PEOPLE, BUT ALSO THE SHARING OF IT WITH LAW ENFORCEMENT PEOPLE FOR THE POSSIBILITY OF PROSECUTION FOR DRUG OFFENSES.

I CHARGE YOU FURTHER IN REGARD TO THE WRITTEN CONSENT FORMS, THAT THE PLAINTIFFS ARE BOUND BY THOSE FORMS AND THE TERMS OF THOSE FORMS WHETHER IT HAS BEEN SHOWN THAT

* * *

FILED JAN 23 1997
LARRY W. PROPES, CLERK
CHARLESTON, SC

ENTERED1-23-97

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Civil Action: 2:93-2624-2

Crystal M. Ferguson, Theresa Joseph, Darlene M. Nicholson, Paula S. Hale, Ellen L. Knight. Patricia R. Williams, Lori Griffin, Pamela Pear, Sandra Powell, and LaVerne Singleton,
PLAINTIFFS

-v-

The City of Charleston, South Carolina, Dr. Harrison L. Peoples, Dr. Thomas C. Rowland, Jr., Dr. Stanley C. Baker, Jr., Dr. Charles B. Hanna, Dr. Cotesworth P. Fishburne, Dr. E. Conyers Obryan Melvyn Berlinsky, Patricia T. Smith, M. J. Cooper, Herbert C. Granger, Robert C. Lake, Jr., Phillip D. Sasser, Claudia W. Peoples, Dr. Carroll V. Bing, Jr., Reuben Greenberg, Charles Molony Condon, David Schwacke, Shirley Brown, R.N., Edgar Horger, III, M.D., Victor Del Bene, John Sanders, William B. Pittard, M.D., Roger Newman, M.D., Harold Bivins, M.D., Melesia Henry, R. N.,
DEFENDANTS

PARTIAL JUDGMENT

This action came before the Court for a trial by jury, Chief Judge C. Weston Houck presiding. The issues have been tried, and the jury has rendered its verdict.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED that as to the causes of action for Unreasonable Search and Seizure under the Fourteenth Amendment and Race Discrimination under the Equal Protection Clause of the Fourteenth Amendment the plaintiffs take nothing, that the said actions to the extent they pray for damages be dismissed with prejudice, and that the defendants The City of Charleston, South Carolina, Reuben Greenberg, Charles Molony Condon, David Schwacke, Shirley Brown, R.N., Edgar Horger, III, M.D., Victor Del Bene, John Sanders, William B. Pittard, M.D., Roger Newman, M.D., Harold Bivins, M.D., Melesia Henry, R.N., recover their costs from the Plaintiffs.

IT IS FURTHER ORDERED AND ADJUDGED that as to the causes of action based on Abuse of Process, the Right to Refuse Medical Treatment under the Fourteenth Amendment, the Right to Due Process under the Fourteenth Amendment, Gender Discrimination under the Fourteenth Amendment, and the Federal Confidentiality Statute, the motion of all Defendants for judgment as a matter of law is granted and all said causes of action are dismissed with prejudice as to all plaintiffs.

IT IS FURTHER ORDERED AND ADJUDGED that as to the causes of action based on the Right to Privacy in Medical Records under the Fourteenth Amendment and the Right to Procreate under the Fourteenth Amendment, the motion of all defendants for judgment as a matter of law is granted, and said causes of action to the extent they pray for damages are dismissed with prejudice as to all plaintiffs.

LARRY W. PROPES, CLERK OF COURT

/s/

By: Lisa H. Walpole, Deputy Clerk

APPROVED: /s/
C. WESTON HOUCK, CHIEF UNITED STATES DISTRICT JUDGE

Charleston, South Carolina

[TRANSCRIPT OF HEARING 1]

IN THE UNITED STATES DISTRICT COURT
STATE OF SOUTH CAROLINA
CHARLESTON DIVISION

PLAINTIFFS' CASE NO: CA: 93-CV-2624

CRYSTAL FERGUSON, ET AL,

-VS-

CITY OF CHARLESTON, ET AL,

DEFENDANTS.

THE ABOVE-ENTITLED CASE CAME ON FOR HEARING BEFORE THE HONORABLE C. WESTON HOUCK, CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT IN CHARLESTON, SOUTH CAROLINA, ON THIS 13TH OF AUGUST, 1997.

NORMA JEAN CARROW,
OFFICIAL REPORTER

APPEARANCES:

SUSAN KING DUNN
ATTORNEY AT LAW
171 CHURCH STREET
CHARLESTON, SC 29401

PRICILLA J. SMITH
CENTER FOR REPRODUCTIVE LAW & POLICY
120 WALL STREET
NEW YORK, NY 10005

APPEARING ON BEHALF OF PLAINTIFF

ROBERT H. HOOD
BARBARA WYNNE SHOWERS
JOSEPH C. WILSON, IV
MOLLY CRAIG
CHRISTIE COMPANION
HOOD & ASSOCIATES
P.O. BOX 1508
CHARLESTON, SC 29402
APPEARING ON BEHALF OF DEFENDANTS

[TRANSCRIPT OF HEARING 2]

THE COURT: GOOD MORNING. KEEP YOUR SEAT. OKAY. THIS IS CIVIL ACTION 93-2624. CRYSTAL M. FERGUSON, ET AL, PLAINTIFFS AGAINST THE CITY OF CHARLESTON, ET AL, DEFENDANTS. THIS IS A CASE THAT WE TRIED I GUESS IN MARCH; IS THAT RIGHT?

MS. DUNN: NOVEMBER THE 2ND TO JANUARY.

MR. HOOD: NOVEMBER TO JANUARY.

THE COURT: OKAY. I DO REMEMBER THAT WE TRIED IT. I TRIED ONE IN MARCH AND ONE IN NOVEMBER, AND SOMETIMES I FORGET EXACTLY WHICH ONE IT WAS. WE TRIED IT. AND AS I RECALL IT, WE SUBMITTED TO THE JURY ONE OF THE CONSTITUTIONAL CLAIMS OF THE PLAINTIFF THAT HAVING TO DO WITH THE ALLEGED

UNCONSTITUTIONAL SEARCH. WE SUBMITTED THAT TO THE JURY AND HAD THEM TO DETERMINE WHETHER OR NOT THAT SEARCH OR THOSE SEARCHES OF THE PLAINTIFFS WERE CONSENTED TO.
WE FOUND THAT THERE WERE SEARCHES THAT WERE COVERED BY THE CONSTITUTION AND THAT UNLESS THEY WERE CONSENTED TO THAT THEY WERE WARRANTLESS SEARCHES FOR WHICH THE PLAINTIFFS COULD RECOVER. THE JURY CAME BACK AND FOUND IN EACH CASE THAT THE PLAINTIFFS DID CONSENT TO THOSE SEARCHES. AND THAT RESULTED IN THEM RETURNING A VERDICT FOR THE DEFENDANTS' IN THOSE CASES.
WE HAVE POST-TRIAL MOTIONS AS FAR AS THAT VERDICT IS CONCERNED THAT WE ARE HERE TO CONSIDER THIS MORNING. WE ALSO HAVE A NONJURY MATTER, A CLAIM THAT WAS BROUGHT UNDER TITLE

[TRANSCRIPT OF HEARING 3]

6. THAT CLAIM ALLEGES THAT THE MEDICAL UNIVERSITY OF SOUTH CAROLINA WAS RECEIVING FEDERAL MONEY AND THAT THEREFORE THEY'RE COVERED BY TITLE 6. AND THAT THEY DISCRIMINATED AGAINST THE PLAINTIFFS BECAUSE OF THEIR RACE, AND THAT BECAUSE OF THAT THE PLAINTIFFS' HAVE A CLAIM UNDER TITLE 6.

SINCE THAT'S A NONJURY MATTER, I SAID AT THE BEGINNING OF THE CASE THAT WE WOULD MAKE A RECORD ON THAT CASE WHILE WE WERE TRYING THE OTHER CLAIMS. AND THEN AT SOME LATER DATE I WOULD MAKE A DECISION ON THE NONJURY MATTER. WE HAVE IT FOR ARGUMENT TODAY, IF YOU WISH TO OFFER ANY ARGUMENT.

AND THEN WE HAVE THE PLAINTIFFS' CLAIM FOR INJUNCTIVE RELIEF. AS I UNDERSTAND THE CLAIMS FOR INJUNCTIVE RELIEF, THEY RELATE TO TWO AREAS. ONE IS THE ALLEGED DENIAL OR INTERFERENCE WITH THE PLAINTIFFS' RIGHT TO PROCREATE. TO BRING THEIR BABIES TO TERM, AS I UNDERSTAND THAT RIGHT TO PROCREATE CAN BE MORE CLEARLY DEFINED.

AND, SECONDLY, A RIGHT, A - AN INJUNCTION PROHIBITING THE VIOLATION OF THE PLAINTIFFS' RIGHTS TO PRIVACY.

WE SAID ON THE RECORD DURING THE TRIAL THAT THERE WAS NO EVIDENCE THAT ANY OF THE DEFENDANTS VIOLATED THE PLAINTIFFS' RIGHT TO PRIVACY BY MAKING PUBLIC OR DISTRIBUTING THEIR CONFIDENTIAL MEDICAL RECORDS. WE WERE NOT CALLED UPON TO MAKE A FINDING IN THIS REGARD, BUT WE DID CONCLUDE AND SAY SO ON THE RECORD THAT ONE OF THE EMPLOYEES OF THE MEDICAL

[TRANSCRIPT OF HEARING 4]

UNIVERSITY DID APPEAR TO HAVE VIOLATED THAT RIGHT OF THE PLAINTIFF BY DISTRIBUTING CERTAIN INFORMATION TO THE SOLICITOR'S OFFICE AND OTHERS THAT MET WITH THESE - IN THE GROUP WHERE THEY DISCUSSED THESE PEOPLE THAT WERE IN THE POLICY.

THE QUESTION TODAY IS WHETHER OR NOT THAT VIOLATION OF THE PLAINTIFFS' RIGHTS TO CONFIDENTIALITY IS SOMETHING THAT WOULD ENTITLE THE PLAINTIFFS TO INJUNCTIVE RELIEF. SO IT SEEMS TO ME THAT THOSE ARE THE ISSUES THAT WE HAVE TO DEAL WITH THIS MORNING. I'M NOT SURE THAT I MENTIONED THE POST-TRIAL MOTION BUT WE HAVE A POST-TRIAL MOTION AS FAR AS JUDGMENT NOV AS FAR AS THE CLAIM THAT WENT BEFORE THE JURY.

I THINK THE PLAINTIFFS ARE THE MOVING PARTIES IN ALL OF THOSE MATTERS, AND SO I'LL BE GLAD TO HEAR FROM YOU FIRST.

AND I TRIED TO TOUCH ALL OF THE MATTERS. I'M NOT READING FROM NOTES, I'M READING FROM MEMORY. AND IT MAY BE THAT I MISSED SOMETHING. AND IF I DID I WILL EXPECT YOU TO CALL IT TO MY ATTENTION. AND BY MENTIONING SOMETHING, I'M NOT SUGGESTING

THAT YOU NEED TO ARGUE ALL OF THOSE POINTS, IT JUST SEEMS TO ME THAT THAT SET THE STAGE FOR OUR HEARING THIS MORNING. AND WHICHEVER OF THOSE POINTS YOU WOULD LIKE TO ARGUE, FEEL FREE TO DO SO.

I WILL PROBABLY - MY PRESENT INTENTION IS AS TO THE TITLE 6, I'LL PROBABLY ISSUE AN ORDER AS TO IT OR ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW. I'M NOT SURE THAT I

[TRANSCRIPT OF HEARING 5]

WILL AS TO THE OTHER MATTERS. I MAY RULE ON THEM TODAY.
OKAY.

MS. DUNN: OKAY.

THE COURT: IF I CAN RULE ON THEM TODAY I'LL CERTAINLY DO IT RATHER THAN PREPARE AN ORDER.

MS. DUNN: YOUR HONOR, I'M NOT SURE WHICH ORDER YOU WANT TO -

THE COURT: I DON'T HAVE ANY.

MS. DUNN: MY CO-COUNSEL IS GOING TO ADDRESS THE TITLE 6 CLAIM. I WOULD JUST LIKE TO SUMMARIZE THE PLAINTIFFS' POSITION AS TO THE INJUNCTIVE RELIEF.

THE COURT: OKAY.

MS. DUNN: AND BE AVAILABLE TO ANSWER ANY QUESTIONS.

THE COURT: ARE THERE ANY ISSUES THAT ARE OUT THERE

THAT ARE TO BE DECIDED THAT I DID NOT MENTION?

MS. DUNN: ONLY ONE I THINK THAT WAS SORT OF IMPLIED BUT NOT ARTICULATED SPECIFICALLY BY THE COURT IS INJUNCTIVE RELIEF IN CONNECTION WITH THE FOURTH AMENDMENT CLAIM AS WELL.

THE COURT: SURE.

MS. DUNN: THERE WAS A CLAIM FOR INJUNCTIVE RELIEF, I THINK THEY GO HAND-AND-HAND.

THE COURT: ABSOLUTELY YOU'RE RIGHT AND I SHOULD HAVE MENTIONED.

MS. DUNN: ALL OF THOSE ISSUES ARE VERY INTERTWINED AND THE PLAINTIFFS DO CONTINUE TO REQUEST AN INJUNCTION THAT

[TRANSCRIPT OF HEARING 6]

WOULD DEAL WITH PREVENTING OF CONTINUED VIOLATION OF THE FOURTH AMENDMENT. THE COURT HAS ARTICULATED, I BELIEVE, THE ONLY TWO INJUNCTIVE RELIEFS THAT REMAIN AFTER THE COURT'S RULING IN THE TRIAL, WHICH WOULD BE THOSE AS TO PROCREATION AND THOSE AS TO THE RIGHT OF PRIVACY.

ADDRESSING -

THE COURT: LET ME ASK YOU THIS. THE POLICY, IF THAT'S - I THINK THAT'S THE WORD WE USE, IS NOT IN EFFECT AT THE PRESENT TIME. IT WAS DISCONTINUED BEFORE WE HAD OUR TRIAL

IN THIS CASE. I DON'T RECALL THERE BEING ANY EVIDENCE OFFERED AS TO THE CIRCUMSTANCES UNDER WHICH IT WAS TERMINATED, ANY DETAILS AS TO THE CIRCUMSTANCES, BUT THAT IT'S BEEN INFERRED THAT IT WAS TERMINATED BECAUSE OF SOME PRESSURE BROUGHT TO BEAR BY THE FEDERAL GOVERNMENT. THAT THE FEDERAL GOVERNMENT EITHER THREATENED OR SOMEHOW THE MEDICAL UNIVERSITY WAS AT RISK OF HAVING A NUMBER OF FEDERAL GRANTS TERMINATED IF THEY CONTINUED THE PROGRAM.

NOW, FIRST OF ALL I WOULD LIKE TO KNOW WHETHER THAT'S YOUR UNDERSTANDING OF THE CIRCUMSTANCES UNDER WHICH IT WAS TERMINATED. AND SECONDLY, IF THAT IS YOUR UNDERSTANDING, WHETHER OR NOT THERE IS ANY AGREEMENT BY THE MEDICAL UNIVERSITY, WAS ANY AGREEMENT AT THAT TIME THAT THEY WOULD NOT INITIATE THE PROGRAM AGAIN?

MS. DUNN: I MEAN, OBVIOUSLY I THINK THE DEFENDANTS ARE IN A BETTER POSITION TO PRESENT SOME OF THAT INFORMATION,

[TRANSCRIPT OF HEARING 7]

BUT I'LL BE HAPPY TO PRESENT MY UNDERSTANDING.

THERE WERE TWO INDEPENDENT INVESTIGATIONS INITIATED IN CONNECTION WITH THIS POLICY THAT INVOLVED FEDERAL

GOVERNMENT AGENCIES. THERE WAS AN OCR INVESTIGATION THAT INVOLVED SPECIFICALLY AND ONLY TITLE 6. IT IS MY UNDERSTANDING THAT THE MEDICAL UNIVERSITY, AND WE HAVE A COPY OF THE WRITTEN MEMORANDUM OF UNDERSTANDING, THAT THE MEDICAL UNIVERSITY ONLY, THE ONLY DEFENDANT THAT WAS INVOLVED IN IT, DID AGREE WITH THE OFFICE OF CIVIL RIGHTS TO SUSPEND THE POLICY. AND THEY AGREED TO DO THAT IN A SPECIFIC MEMORANDUM THAT DID AGREE THAT THE MEDICAL UNIVERSITY WOULD NOT THREATEN ARREST AND WOULD TELL THE POLICE DEPARTMENT AND SOLICITOR'S OFFICE THAT THEY WOULD NOT THREATEN ARREST. THAT AGREEMENT WAS - A SUSPENSION OF IT WAS PENDING THIS CASE.

SO THERE WAS AN UNDERSTANDING THAT THIS CASE WOULD GO FORWARD AND MAKE A DETERMINATION OF THE TITLE 6. AND THAT THE ESSENTIAL DEAL WAS THAT THE MEDICAL UNIVERSITY WOULD ENTER INTO THAT AGREEMENT. AND AS A RESULT OF THAT THE FEDERAL GOVERNMENT WOULD SUSPEND ITS INVESTIGATION SO IT WOULDN'T GO FARTHER IN THE INVESTIGATION. SO IT WAS SORT OF A PRELIMINARY. IT WASN'T AN AGREEMENT AFTER THE END OF A FACT FINDING, IT WAS SIMPLY AT THAT POINT WHEN THEY REACHED THAT

AGREEMENT THEN THEY SUSPENDED THE FACT FINDING AND DID NOT DO
A VOLUMINOUS INVESTIGATION HERE AND THAT SORT OF THE TRADE --
OFF WAS THAT THEY WOULD SUSPEND IT.

[TRANSCRIPT OF HEARING 8]

THE COURT: I UNDERSTAND.
MS. DUNN: THAT DID HAPPEN. BUT EVEN AFTER THAT, CERTAINLY THE POSITION ARTICULATED IN THIS COURT AND BY THE ATTORNEYS ON BEHALF OF ALL OF THE DEFENDANTS IS THAT THERE IS INTENT TO REESTABLISH THE POLICY IN ITS FULL FORCE AND THAT THEY ARE SIMPLY WAITING THE DETERMINATION OF THIS COURT.
NOW I DON'T KNOW IF THAT'S THE PRESENT FORMAL POSITION OF THE MEDICAL UNIVERSITY OR ANY OF THE OTHER DEFENDANTS', BUT THAT HAS BEEN THE - THE ARGUMENT THAT HAS BEEN ARTICULATED.
THE COURT: OKAY.
MS. DUNN: THERE WAS ALSO ANOTHER INVESTIGATION THAT INVOLVED THE EXPERIMENTATION WITH HUMANS AND THERE WASN'T - THERE WAS MORE OF AN INFORMAL AGREEMENT INVOLVED WITH THAT, BUT NOT SOMETHING THAT INVOLVED THE SUSPENSION OF THE POLICY, BECAUSE IT CAME AFTER THE AGREEMENT OF THE POLICY HAD BEEN SUSPENDED ANYWAY. BUT I DON'T THINK ANY OF THOSE MAKE THE QUESTION FOR INJUNCTIVE RELEASE MOOT, IF THAT WAS THE QUESTION.
THE COURT: THAT WAS NOT MY QUESTION.

MS. DUNN: THAT'S WHERE WE STAND.

THE COURT: IT MAY BE THE QUESTION, BUT IT WAS NOT MY QUESTION.

MS. DUNN: THAT'S WHERE WE STAND.

THE COURT: OKAY. YOU CAN GO AHEAD.

[TRANSCRIPT OF HEARING 9]

MS. DUNN: WE DO BELIEVE THAT THE COURT'S FINDING IN THE CONTEXT OF THE TRIAL THAT THE CONSTITUTIONAL RIGHTS HAD BEEN VIOLATED WITHIN THE CONTEXT OF THIS POLICY WOULD STILL REQUIRE THAT INJUNCTIVE RELIEF BE GRANTED FOR THE PLAINTIFFS IN ORDER TO PREVENT ANY FUTURE DAMAGES TO THAT PARTICULAR CONSTITUTIONAL RIGHT FOR OTHER WOMEN THAT MAY COME UNDER THIS POLICY OR UNDER SOME NEWLY CONFIGURED POLICY.

THE COURT: WHAT FINDING DID I MAKE THAT CONSTITUTIONAL RIGHTS HAD BEEN VIOLATED?

MS. DUNN: I BELIEVE THAT YOU MADE THAT FINDING IN CONNECTION WITH YOUR DECISION THAT THERE WAS NOTHING TO SEND TO THE COURT FOR DAMAGES BECAUSE THERE WAS NOT A DEFENDANT AGAINST WHOM DAMAGES COULD BE ASSESSED.

THE COURT: YOU'RE TALKING ABOUT AS FAR AS THE MEDICAL RECORDS ARE CONCERNED?

MS. DUNN: IT WAS MY UNDERSTANDING THAT YOUR DETERMINATION WAS THAT THE TESTIMONY BEFORE THE COURT, PARTICULARLY IN RELATIONSHIP TO THOSE MEETINGS AT THE MEDICAL UNIVERSITY, INVOLVED AN EXCHANGE OF INFORMATION THAT WAS THE KIND OF INFORMATION THAT WAS PRIVATE AND THAT WOULD HAVE BEEN PROTECTED BY A CONSTITUTIONAL CLAIM TO A RIGHT TO PRIVACY BUT THAT IT WASN'T A DAMAGE ISSUE, IT SIMPLY WOULD WAIT FOR THE COURT TO DEAL WITH WHAT KIND OF INJUNCTIVE RELIEF COULD BE FASHIONED THAT WOULD PROTECT THAT KIND OF VIOLATION IN THE FUTURE.

[TRANSCRIPT OF HEARING 10]

AND WE BELIEVE THAT ISSUE IS STILL BEFORE THE COURT. AND THE PLAINTIFFS DO WANT INJUNCTIVE RELIEF THAT WOULD PROTECT NOT ONLY THE MEDICAL UNIVERSITY BUT ALL OF THE DEFENDANTS THAT - TO PREVENT THE POLICY OF THAT KIND OF FREE FORM SHARING OF MEDICAL INFORMATION SIMPLY BY THE TESTING OF A WOMEN POSITIVE WHO IS PREGNANT, AND WE WOULD ASK FOR THAT INJUNCTIVE RELIEF.

AS FAR AS THE PROCREATION CLAIM, IT WAS STILL UNCLEAR TO ME AT THE END OF THE TRIAL IF EVERYBODY WAS ALL ON THE SAME PAGE IN TERMS OF WHAT THAT CLAIM WAS ABOUT. I WOULD CANDIDLY TELL THE COURT -

THE COURT: I NEVER UNDERSTOOD WHAT IT WAS ABOUT.

MS. DUNN: I BELIEVE THAT THE INFORMATION THAT WAS PRESENTED CONCERNING SOME -

THE COURT: I MEAN, I UNDERSTAND WHAT YOU SAID, BUT I NEVER COULD SEE ANY EVIDENCE THAT SUPPORTED THAT CONTENTION. I UNDERSTAND WHAT YOU WERE SAYING ABOUT THE RIGHT TO PROCREATE BEING INTERFERED WITH, BUT I NEVER SAW, IF THE RIGHT WORD IS A PATTERN OF CONDUCT, ON THE PART OF THE DEFENDANT THAT SUPPORTED THAT ALLEGATION. THERE WAS ONE ISOLATED INCIDENT WHERE ONE WOMEN SAID THAT SHE WAS TOLD THAT IF SHE DIDN'T HAVE THIS BIRTH CONTROL DEVICE INSERTED, THAT IF SHE DIDN'T CONSENT TO IT, THEY WERE GOING TO DO IT ANYWAY. AND THEN SHE CONSENTED TO IT.

SO, I REALLY DON'T KNOW WHERE THAT LEAVES YOU ON

[TRANSCRIPT OF HEARING 11]

THAT. IF SHE HADN'T CONSENTED TO IT AND THEY HAD DONE IT,

WOULD THAT ONE ISOLATED INCIDENT HAVE BEEN ENOUGH TO SAY THAT THERE WAS A POLICY THAT NEEDED TO BE ENJOINED, OR ARE WE SAYING THAT THAT ONE TECHNICIAN WAS OVER ZEALOUS IN TRYING TO SELL HIS SERVICES TO A PATIENT. I DON'T KNOW. BUT THAT'S THE ONLY EVIDENCE THAT I SAW THAT COULD EVEN BE STRETCHED TO SUPPORT A CLAIM FOR INTERFERENCE WITH THEIR RIGHT TO PROCREATE.

MS. DUNN: YOUR HONOR, I DO UNDERSTAND THAT THAT WAS CERTAINLY THE IMPRESSION THAT I GOT IN THE COURSE OF THE TRIAL. BUT THE INFORMATION ACTUALLY CONCERNING THE PERHAPS FORCED BIRTH CONTROL ON ONE PARTICULAR PLAINTIFF WAS REALLY TANGENTIAL AND NOT CENTRAL TO THE PLAINTIFFS' ARGUMENT CONCERNING PROCREATION. IT WAS NOT A PARTICULAR PLAINTIFF BEING PUT IN A PARTICULAR POSITION OF HAVING TO CHOOSE BETWEEN CARRYING A CHILD TO TERM OR BEING FORCED INTO BIRTH CONTROL, THAT WAS THE ISSUE WE WERE ATTEMPTING TO ARTICULATE. OBVIOUSLY WE DIDN'T DO IT VERY ARTFULLY OR YOU WOULD UNDERSTAND THAT ARGUMENT, SO LET ME TRY IT AGAIN.

THE COURT: I READ A CASE THAT YOU CITED AND NO CASE WENT AS FAR AS YOU SUGGESTED I SHOULD GO. I SAW NO CASE THAT

YOU CITED, OR ANYBODY ELSE CITED, THAT SUPPORTED THE KIND OF - I MEAN THE CASES THAT HAVE CITED ARE CLEARLY DEFINED ACTS BY STATES AND PEOPLE IN STATE AGENCIES THAT INTERFERE WITH SOMEONE'S RIGHT TO PROCREATE. I MEAN, THERE IS NO DOUBT ABOUT

[TRANSCRIPT OF HEARING 12]

IT, YOU READ THE FACTS AND YOU SAY, BINGO, HERE IT IS, AND I READ THE FACTS IN THIS CASE, AND THEY NEVER -

MS. DUNN: I UNDERSTAND, BECAUSE WE WERE USING CASES THAT WERE DEALING WITH AN INDIVIDUAL PERSON'S CLAIM IN RELATIONSHIP TO A PARTICULAR PREGNANCY. AND I THINK IT IS HARD TO TAKE THOSE CASES AND APPLY IT TO THIS POLICY. AND I THINK IT'S ONE OF THE THINGS THAT WE HAVE LEARNED OVER THE COURSE OF THIS CASE IS THAT THIS CASE IS KIND OF PECULIAR. YOU KNOW, WE'RE TRYING TO TAKE THINGS THAT WE LEARN AND ATTACH IT TO A POLICY THAT IS PRETTY UNIQUE. AND IT'S OUR POSITION THAT THE ENTIRE POLICY ON ITS FACE, BY ITS DESIGN, IN ITS JUSTIFICATION, IS FOCUSED ONLY ON WOMEN WHO CHOSE TO TAKE THEIR PREGNANCY TO TERM. AND THAT BECAUSE OF THAT, IT IS PUNISHING THOSE WOMEN WHO MAKE THAT CHOICE.

SO IT'S THE ENTIRE NATURE OF THE POLICY. IF YOU REMEMBER I BELIEVE IT WAS DOCTOR NEUMAN, WHEN HE WAS ARTICULATING THE REASON WHY THE POLICY WOULD APPLY TO WOMEN WHO HAD ALREADY GIVEN BIRTH, YOU KNOW THE BABY, THAT BABY WAS ALREADY HERE, THAT THE REASON WE WERE ARRESTING THEM, THE REASON WE WERE STILL CONTINUING THIS POLICY, WE WERE INTENDING TO EFFECT THE FUTURE PREGNANCIES OF THESE WOMEN. IT WAS INTENDED TO CONTROL, MANIPULATE IN ITS EFFECT, PUNISH AND COERCE WOMEN WHO CHOSE TO BE PREGNANT, CHOSE TO CARRY THEIR PREGNANCY TO TERM, WERE THE ONLY ONES WHO WERE AFFECTED BY THE PUNITIVE INTRUSIVE NATURE OF THIS POLICY.

[TRANSCRIPT OF HEARING 13]

SO IT'S THAT PIECE OF IT. YOU KNOW, NOT THAT A PARTICULAR CLIENT WAS FORCED INTO A PARTICULAR DECISION, BUT THAT SHE WOULD NOT HAVE BEEN CAUGHT IN THIS NET. THAT ONLY PREGNANT WOMEN WERE PUNISHED, AND THAT IS AN INFRINGEMENT OF THE RIGHT TO PROCREATE THAT IS PRECIOUS. ABSOLUTELY PRECIOUS IN EVERY FAMILY. THAT'S WHAT - THAT'S WHAT WE WERE TRYING TO ARTICULATE. AND I REALIZE THAT WE DIDN'T DO IT IN A WAY THAT

MADE THAT CLEAR.
BUT BY HOW THEY SET IT UP, AND IT'S ONLY THIS PARTICULAR CATEGORY OF PEOPLE THAT WOULD BE PUNISHED, YOU KNOW, BY CRIMES THAT ARE NOT PARTICULAR TO PREGNANCY. USING IT, YOU KNOW, TO CONTROL, MANIPULATE AND COERCE WOMEN WHO CHOSE TO CONTINUE WITH THEIR PREGNANCIES. WOMEN WHO LOST THEIR BABIES WERE NOT STILL UNDER THE POLICY. YOU KNOW THE WOMEN - AND THAT'S WHAT WE ARE TALKING ABOUT. IT'S THAT PIECE OF EFFECTING THE CHOICE TO PROCREATE IN GENERAL FOR A WHOLE CATEGORY OF PEOPLE. AND EVERY ONE OF OUR CLIENTS FIT INTO THAT CATEGORY. SO THERE ARE PEOPLE THAT CAN ARTICULATE THAT CLAIM. THAT'S -
ANY OTHER QUESTIONS AS TO THOSE THREE PARTS?
THE COURT: NO. YOU GO AHEAD WITH YOUR ARGUMENT.
MS. DUNN: AND I BELIEVE THAT OUR MOTIONS AND BRIEFS AFTER THE LAST MOTION IN RELATION TO THE FOURTH AMENDMENT DID ANSWER THE SPECIFIC QUESTIONS THAT THE COURT ASKED IN TERMS OF LOOKING AT EACH PARTICULAR ONE OF THE PLAINTIFFS AND

[TRANSCRIPT OF HEARING 14]

ADDRESSING THE DOCUMENTS AND OTHER KINDS OF INFORMATION. FOR

INSTANCE, THE VIDEO OR PUBLIC SERVICE ANNOUNCEMENT, AND WHAT RELATIONSHIP EACH ONE OF THESE PLAINTIFFS COULD HAVE HAD. IT SEEMS TO ME THAT THERE ARE ONLY A FEW, YOU KNOW, PARTICULAR ISSUES THAT PERHAPS THE COURT WOULD WANT TO HEAR MORE ARGUMENT ON. ONE OF THOSE I WOULD DEFER TO MY CO-COUNSEL, WHICH IS THE ISSUE OF THE STANDING OF ELLEN KNIGHT IN TERMS OF THE FOURTH AMENDMENT CLAIM WHEN IT WAS THE CHILD WHO TESTED POSITIVE.

THE OTHER ISSUES WERE SIMPLY IN CONNECTION WITH THIS DEAR PATIENT LETTER, THE JOINT EXHIBIT 10 AND WHO SAW IT AND WHEN THEY MIGHT HAVE SEEN IT. CERTAINLY WE COULD FIND NO DIRECT INFORMATION THAT ANY ONE OF THE PLAINTIFFS SAW THAT EXHIBIT PRIOR TO TESTING POSITIVE. AND AS WE LOOKED THROUGH IT, PARTICULARLY ADDRESSING THAT ISSUE, WE COULD FIND THAT - NOTES IN ONE OF OUR CLIENT'S RECORD THAT INDICATES THAT SHE WAS GIVEN THE LETTER, BUT IT RECORDED THAT SHE RECEIVED THE LETTER AFTER SHE WAS TESTED. NO INDICATION THAT THAT LETTER WAS PRESENTED AT THE TIME, THE FORMAL FORMULATION OF THE POLICY, WHICH WOULD SEEM TO INDICATE THAT NONE OF OUR CLIENTS WHO WERE TESTED PRIOR TO THAT WOULD HAVE HAD THE POSSIBILITY

OF SEEING THAT LETTER.
AND WE ALSO FEEL THAT WE NEED TO SAY ONCE AGAIN THAT
WE CAN - WE HAVE READ THAT LETTER AND READ THAT LETTER AND
READ THAT LETTER, AND CAN'T FIGURE OUT HOW THAT LETTER WOULD

[TRANSCRIPT OF HEARING 15]

GIVE ANY KIND OF NOTICE THAT THE TEST WAS BEING DONE. AND
THAT WHAT WOULD HAPPEN WITH THAT TEST BEFORE A PARTICULAR
TEST. IT REFERS NOTHING TO UDS SCREENS. IT MAKE NO SPECIFIC
REFERENCE TO THAT AT ALL. AND IN FACT, IF ANYTHING, A
MISLEADING REFERENCE IN THAT IT INDICATES THAT IF YOU CONTINUE
TO USE DRUGS, NOT JUST IF YOU WERE USING DRUGS WHEN YOU SHOWED
UP HERE FOR THE FIRST DAY, BUT IF YOU CONTINUE TO USE DRUGS,
THEN THERE WOULD BE SOME KIND OF A POSSIBLE REPORT, WHEN IT
WAS CLEAR UNDER THIS POLICY THAT IT WAS THAT INITIAL DRUG
SCREEN, THAT INITIAL DRUG SCREEN IS WHAT TRIGGERED A LAW
ENFORCEMENT EVENT FOR ALL OF THESE WOMEN. THEY WERE SUBJECT
TO THAT THE MINUTE THAT FIRST TEST WAS TAKEN. IT HAD NOTHING
TO DO WITH A CONTINUED PATTERN. THE CONTINUED PATTERN MIGHT
HAVE HAD SOMETHING TO DO WITH HOW THE POLICY WAS THEN APPLIED

TO THEM, BUT IT DIDN'T CHANGE THE NATURE OF THAT FIRST UDS SCREEN FOR OUR PATIENTS OR ANY OTHER PATIENT WHO HAPPENED TO COME UNDER IT.

THE COURT: GO AHEAD.

MS. DUNN: I BELIEVE THAT THOSE WERE THE SPECIFIC ISSUES THAT THE COURT ASKED US TO BRIEF AS TO OUR CLIENTS, AND WE HAVE DONE SO. IF THERE ARE ANY PARTICULAR QUESTIONS ABOUT THAT ADDITIONAL INFORMATION I WOULD BE HAPPY TO ANSWER THEM IF I CAN.

THE COURT: OKAY.

MS. DUNN: I'LL DEFER TO CO-COUNSEL THEN AS TO THAT

[TRANSCRIPT OF HEARING 16]

SPECIFIC ISSUE AS TO ELLEN KNIGHT AND THE TITLE 6 CLAIM.

THE COURT: OKAY. GOOD.

MS. SMITH: GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

MS. SMITH: I THINK, UNLESS THERE ARE ANY SPECIFIC ISSUES ABOUT THE THREE PLAINTIFFS THAT YOU INDICATED THAT YOU WERE INCLINED TO RULE HAD NOT CONSENTED, LORI GRIFFIN, SANDRA POWELL AND LAVERN SINGLETON, I'LL PUT THEM ASIDE FOR A MOMENT. I DON'T BELIEVE THAT THERE WAS ANY NEW EVIDENCE THAT CAME UP IN THE BRIEF ABOUT THEM THAT HADN'T BEEN FULLY

DISCUSSED BEFORE, SO I REALLY WANT TO CONCENTRATE ON ELLEN KNIGHT AND ALSO PAMELA PEAR.

FIRST AS TO ELLEN KNIGHT, THERE ARE TWO ISSUES REALLY THAT I THINK ARE CENTRAL TO HER CASE. ONE IS THAT SHE WAS TESTED HERSELF. THAT TEST WAS NEGATIVE. AND SHE WAS NOT ARRESTED BASED ON THAT TEST. BUT THERE WAS A SEARCH DONE AND IT WAS DONE BEFORE THE SEARCH EVEN ON LAVERN SINGLETON, EARLY IN THE POLICY BEFORE JOINT EXHIBIT 10. BEFORE AT LEAST THERE IS ANY EVIDENCE THAT JOINT EXHIBIT 10 WAS AVAILABLE. SO THERE WAS A SEARCH ON HER. SO EVEN THOUGH IT'S NEGATIVE, WE HAVE TO RECOGNIZE THAT THAT WAS ALSO A SEARCH.

IF THE POLICE BROKE INTO YOUR HOME AND DIDN'T CATCH YOU DOING ANYTHING, THEY STILL MAY HAVE VIOLATED YOUR FOURTH AMENDMENT RIGHTS. AND IN FACT THAT IS WHAT HAPPENED TO ELLEN KNIGHT.

[TRANSCRIPT OF HEARING 17]

THE SECOND ISSUE THEN IS THAT THERE WAS A SEARCH ON HER BABY, ON HER INFANT WHO HAD JUST BEEN BORN. AND WE CITED TO THE COURT CASES THAT I BELIEVE RECOGNIZE THAT PARENTS HAVE THE RIGHT TO CONSENT TO THE INFANT'S - A SEARCH OF THE

INFANT.

NOW, I AGREE WITH OPPOSING COUNSEL THAT THOSE CASES ARE NOT ALWAYS CLEAR. THEY USUALLY COME UP IN ANOTHER CONTEXT THAT IS IN ADMINISTRATIVE SEARCHES, WHICH IS A DIFFERENT DOCTRINE THAN IS APPLIED TO CRIMINAL SEARCHES. THOSE ARE SEARCHES UNDER THE TLO LINE OF CASES. AND SO THOSE CASES HAVE DONE SOMEWHAT OF A DIFFERENT ANALYSIS THAN I THINK WE NEED TO DO HERE. BUT THE ONE CASE THAT WAS CITED BY OPPOSING COUNSEL, THE FOURTH CIRCUIT CASE, WILDER, THAT WAS A CASE DIFFERENT FROM THIS, BUT I THINK WITH TEACHINGS THAT ARE HELPFUL TO US HERE, IT INVOLVED AN INVESTIGATIVE VISIT BY A SOCIAL WORKER, NOT A CRIMINAL INVESTIGATION, BUT A SOCIAL WORKER'S INVESTIGATION INTO A SUPPOSED FOSTER CARE MOM, A WOMEN WHO WAS APPARENTLY TAKING CARE OF A BUNCH OF KIDS WITHOUT ANY AUTHORITY TO DO SO AND WITH NO FORMAL ARRANGEMENT OF ANY OF THEM. ONE WAS HER OWN CHILD BUT THE REST WERE NOT. I BELIEVE ANOTHER ONE HAD BEEN OFFICIALLY ADOPTED AND THE OTHER SEVEN WERE OTHER PARENTS' KIDS. AND THE PARENTS CAME AND MADE A COMPLAINT TO THE SOCIAL WORKING SAYING WE WANT OUR KIDS BACK, WE THINK THERE IS SOMETHING GOING ON THERE. AND THERE WERE

SEARCHES IN THAT CONTEXT AS PART OF THE ADMINISTRATIVE PROCESS

[TRANSCRIPT OF HEARING 18]

OF THE DEPARTMENT OF HEALTH TO FIND OUT WHAT WAS HAPPENING.

AND EVEN IN THAT CASE, THE COURT FOUND THAT IT SAID

THAT OR AT LEAST RECOGNIZED THAT SHE HAD AN ATTENUATED PRIVACY

CONCERN EVEN OVER KIDS THAT WEREN'T IN HER OFFICIAL CONTROL.

BUT THEN FOUND THAT THERE WAS NO VIOLATION AND INDEED IT WAS

AN INVESTIGATIVE VISIT AND THESE WERE KIDS THAT WEREN'T REALLY

- DIDN'T BELONG TO HER ANYWAY.

BUT THE MOST IMPORTANT HOLDING IN THAT CASE I

BELIEVE WAS THAT THAT WAS REALLY A CASE ABOUT THE REAL PARENTS

COMING IN AND WANTING TO GET THEIR KIDS BACK. AND SO THE

POLICE WERE ACTING ON THE BASIS OF THAT AUTHORITY, AND HAD

EVERY RIGHT TO DO SO TO GET THE KIDS BACK FOR THE REAL PARENTS

AND SO HAD QUALIFIED IMMUNITY.

THE OTHER CASES THAT WE CITED, I BELIEVE, DO

INDICATE THAT THE PARENT HAS THE FOURTH AMENDMENT RIGHT FOR

THE INFANT. IF THAT WERE NOT TRUE, THE INFANT COULD BE

SEARCHED IN EVERY INSTANCE. THERE WOULD BE NO ABILITY OF THE

INFANT TO CONSENT. AND I THINK THERE IS A REAL DIFFERENCE

BETWEEN THE INFANT AND SAY A 14 YEAR OLD OR 15 YEAR OLD WHO HAS THE POWER TO CONSENT AND THE KNOWLEDGE AND CAN SAY NO. WITH AN INFANT NOBODY ELSE HAS THAT POWER EXCEPT FOR THE PARENT. THE MEDICAL UNIVERSITY ALSO -

THE COURT: ARE WE TALKING ABOUT THE POWER TO CONSENT OR ARE WE TALKING ABOUT STANDING TO SUE FOR THE VIOLATION?

[TRANSCRIPT OF HEARING 19]

MS. SMITH: WELL THOSE ARE TWO DIFFERENT.

THE COURT: AND AREN'T THEY DIFFERENT?

MS. SMITH: I THINK THEY ARE DIFFERENT ISSUES.

THE COURT: THERE IS NO QUESTION I HAVEN'T BEEN INVOLVED IN IT IN YEARS, BECAUSE I JUST HAVEN'T PRACTICED LAW, BUT I MEAN YOU HAVE GUARDIAN AD LITEMS AND GENERAL GUARDIANS FOR CHILDREN, AND SOME INSTANCES THE PARENTS CAN ACT FOR THE CHILDREN.

MS. SMITH: YES.

THE COURT: AND BE THEIR VOICE OF CONSENT. BUT THAT' DOES NOT MEAN THAT WHEN THAT CHILD IS INJURED OR SOMETHING ELSE HAPPENS, THAT THE PARENT HAS THE CAUSE OF ACTION. THE PARENTS USED TO HAVE A CAUSE OF ACTION FOR MEDICAL BILLS AND

LOSS OF SERVICES, THAT'S AN OLD COMMON LAW CAUSE OF ACTION. I THINK IT PROBABLY STILL EXISTS, BUT THAT'S THE SERVICES THAT YOU HAVE ON THE CHILD. I NEVER QUITE UNDERSTOOD IT WHETHER IT WAS TO CUT YOUR GRASS OR WHATEVER, OR PARK THE CAR, BUT THAT'S A CLAIM THAT THE PARENTS HAVE FOR THEIR DAMAGES FOR LOSS OF MEDICAL FOR WHICH THEY'RE LEGALLY RESPONSIBLE AND LOSS OF SERVICES.

MS. SMITH: RIGHT.

THE COURT: BUT THAT'S NOT THE CLAIM FOR THE CHILD'S INJURY, YOU HAVE GOT AN ENTIRELY DIFFERENT SITUATION.

MS. SMITH: I AGREE THOSE ARE DIFFERENT. I THINK IF YOU LOOK AT THE DURRELL (PH.) CASE FROM THE 7TH CIRCUIT, THAT

[TRANSCRIPT OF HEARING 20]

WAS A CASE WHERE THE PARENTS ASSERTED THEIR OWN FOURTH AMENDMENT RIGHTS AND WHICH THE COURTS LOOKED TO SEE WHETHER OR NOT THERE HAD BEEN CONSENT BY THE PARENTS TO THE SEARCH. AND THEY WERE IN FACT REVERSED ON SUMMARY JUDGMENT FOR THE DEFENDANT ON THE PARENTS' FOURTH AMENDMENT CLAIM. I THINK THE COURT AT LEAST RECOGNIZED THAT THE PARENTS HAD A VALID INTEREST THERE. THAT'S ALSO TRUE IN THE TENTH CIRCUIT CASE

FRANCE VERSUS LITTLE, WHICH ALSO I BELIEVE WAS THE PARENTS' FOURTH AMENDMENT CLAIM. AND THE COURT WAS LOOKING TO SEE WHETHER OR NOT THERE HAD BEEN ANY CONSENT BY THE PARENTS.

I DON'T THINK THERE IS CLEAR AUTHORITY FROM THE FOURTH CIRCUIT ON THE ISSUE, BUT I THINK ESPECIALLY IN THE CONTEXT OF THIS CASE, WHERE YOU'RE TALKING ABOUT A WOMEN WHO JUST GAVE BIRTH, YOU'RE TALKING ABOUT A WOMEN WHOSE BABY IS IN THE NEXT ROOM, AS IT WERE, VERY CLOSE TO HER, A WOMAN FROM WHOM THE MEDICAL UNIVERSITY ITSELF SOUGHT CONSENT TO TREAT THE CHILD, RECOGNIZING HER CONTROL OVER THE CHILD IN THAT REGARD, THAT ALL OF THOSE THINGS MILITATE IN FAVOR OF FINDING FOR ELLEN KNIGHT AND THAT IT WAS HER RIGHT THAT WAS VIOLATED.

I ALSO BELIEVE THAT WE HAVE IN OUR COMPLAINT CLAIMS FOR VIOLATIONS OF THE RIGHT TO PRIVACY GENERALLY, WHICH COULD INCLUDE THE RIGHT TO FAMILIAL PRIVACY WHICH WOULD BE VIOLATED AS WELL. THAT'S A SEPARATE ISSUE.

AS TO PAMELA PEAR, THERE IS A NOTATION IN THE MEDICAL RECORD THAT WE PRESENTED TO THE COURT INDICATING THAT

[TRANSCRIPT OF HEARING 21]

JOINT EXHIBIT 10 WAS SHOWN TO HER ON JULY 23, 1990, AFTER SHE HAD TESTED POSITIVE. THERE IS NO INDICATION THAT THAT WAS THE SECOND TIME THAT SHE HAD SEEN THE FORM, THAT SHE HAD EVER SEEN THE FORM BEFOREHAND. AND I THINK SHOWS THAT THAT IS THE WAY THAT FORM WAS USED, JUST LIKE THE SOLICITOR LETTER, WHICH WAS CLEARLY USED AFTER THE TESTS WERE MADE AND CONDUCTED.

IN ADDITION, AND I THINK THAT CALLS INTO QUESTION IN FACT THE USE OF JOINT EXHIBIT 10 WITH THE REST OF THE PLAINTIFFS, WHEN WAS THAT IN FACT SHOWN. I DON'T BELIEVE THAT THE DEFENDANTS HAVE GIVEN US ANY DIRECTIVE AND SAID THAT IT WAS SHOWN TO THE PLAINTIFFS BEFOREHAND, AND I THINK IT'S THEIR BURDEN TO DO SO.

ALSO, I BELIEVE THAT IT'S THERESA JOSEPH, WHO WAS TESTED WHEN SHE CAME IN FOR, NOT FOR PRENATAL CARE, BUT I BELIEVE IT WAS CELLULITIS OR AN INJURY TO HER FOOT. SHE WAS THERE FOR - IN THE GENERAL MEDICAL AREA NOT IN THE PRENATAL CARE AREA. SO IF IT WAS TRUE THAT JOINT EXHIBIT 10 WAS USED IN PRENATAL CARE UNIT, SHE HAD NO OPPORTUNITY TO SEE JOINT EXHIBIT 10 BEFORE SHE WAS TESTED, EITHER.

I'LL MOVE ONTO THE TITLE 6 CLAIMS UNLESS YOU WANT -

THE COURT: YES.
MS. SMITH: I JUST WANT TO BRIEFLY GO THROUGH WHAT I SEE ARE THE FIVE DECISION POINTS THAT I THINK ALL OF WHICH I BELIEVE FOCUSED THE POLICY ON A SMALLER AND SMALLER GROUP OF WOMEN THAT WAS MORE - BECAME MORE DISPROPORTIONATELY AFRICAN

[TRANSCRIPT OF HEARING 22]

AMERICAN AS WE WENT ALONG.
THE COURT: YOU'RE TALKING ABOUT STATISTICAL EVIDENCE OR THE DIRECT EVIDENCE?
MS. SMITH: I'M SORRY?
THE COURT: YOU'RE TALKING ABOUT THE STATISTICAL EVIDENCE OR DIRECT EVIDENCE OF DISCRIMINATION?
MS. SMITH: I'M TALKING ABOUT STATISTICAL EVIDENCE.
THE COURT: OKAY.
MS. SMITH: THE FIRST - AND OF COURSE THE DIRECT EVIDENCE HAS SOME RAMIFICATIONS AS WELL AS FOR THE STATISTICAL EVIDENCE AND THE WEIGHT OF IT. BUT I WOULD LIKE TO GO THROUGH THE FACTS AND THE DEVELOPMENT OF THE POLICY AND WHAT I THINK WE NEED TO LOOK AT FOR TITLE 6 PURPOSES.
THE FIRST DECISION WAS TO IMPLEMENT THE POLICY AT MUSC. AND THAT WAS A DECISION MADE JOINTLY BY MUSC, THE

SOLICITOR'S OFFICE AND AT THE POLICE DEPARTMENT.
NOW I BELIEVE THAT BOTH THE SOLICITOR'S OFFICE AND THE CITY POLICE DEPARTMENT ARE PROPER TITLE 6 DEFENDANTS. THEY RECEIVE FEDERAL FUNDS AND THEREFORE THEY'RE LIKE ANY OTHER ENTITY THAT RECEIVES FEDERAL FUNDS. AND IF THEY'RE - THEY RECEIVE FEDERAL FUNDS FOR ONE PROGRAM OR ACTIVITY, SAY A HEALTH DEPARTMENT OR EDUCATION OR PARKS, THEN ANY OTHER PROGRAM OR ACTIVITY UNDER THEIR JURISDICTION ALSO IS COVERED BY TITLE 6 JUST LIKE A UNIVERSITY WOULD BE.
AND THE INTERAGENCY GROUPING WAS CERTAINLY A PROGRAM

[TRANSCRIPT OF HEARING 23]

OR ACTIVITY OF THOSE TWO DEPARTMENTS AND THEREFORE THEIR CHOICE TO APPLY THE POLICY ONLY TO MUSC I THINK COMES UNDER TITLE 6 HERE. THERE WAS EVIDENCE DURING THE TRIAL THAT THAT CHOICE IN AND OF ITSELF HAD A SIGNIFICANT DISPROPORTIONATE IMPACT ON AFRICAN AMERICANS BECAUSE THE POPULATION OF AFRICAN AMERICANS AT MUSC WAS AROUND 60 PERCENT, WHILE AS THE POPULATION AT OTHER HOSPITALS WAS AROUND 33 PERCENT.
SECOND DECISION-

THE COURT: I THOUGHT TITLE 6 WAS CONFINED TO ADDRESS DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE. THAT'S BASICALLY A QUOTE FROM TITLE 6.

MS. SMITH: WELL, YOUR HONOR, YOU MAY RECALL THE GROVE CITY VERSUS BELL CASE, I BELIEVE IT WAS, WHICH WAS THE CASE THAT HELD - IT IN MANY WAYS GUTTED THE IMPACT OF TITLE 6 FOR A PERIOD BECAUSE IT HELD THAT IN A UNIVERSITY WHERE THE UNIVERSITY UNDER ONE ARM RECEIVES FEDERAL FUNDS SAY FOR ITS RESEARCH AND SCIENCE POLICIES, PEOPLE WERE ATTEMPTING TO USE TITLE 6 TO SAY THAT YOU HAVE TO - YOU CAN'T DISCRIMINATE IN YOUR ATHLETIC DEPARTMENTS. AND THEY SAID IN GROVE CITY VERSUS BELL, WELL, NO, IT ONLY APPLIES TO THE ONE PROGRAM OR ACTIVITY UNDERNEATH THE UNIVERSITY, IT DOESN'T APPLY TO THE OTHERS.

THE COURT: WELL, LET'S ADDRESS - LET'S APPLY THAT FACTUAL SITUATION TO THIS.

MS. SMITH: WHAT HAPPENED IS -

[TRANSCRIPT OF HEARING 24]

THE COURT: TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA BECAUSE IT CAN BE APPLIED TO THEM.

MS. SMITH: BUT WHAT HAPPENED - I'M SORRY.
THE COURT: BUT THE PROBLEM IS THAT YOU TAKE THE CITY OF CHARLESTON, THAT THE EXAMPLE THAT YOU GET IS THAT THEY'RE GETTING MONEY FROM THE FEDERAL GOVERNMENT FOR STREETS FOR INSTANCE, OR PARKS I THINK IS THE EXAMPLE THAT YOU USED.
MS. SMITH: UMM-HMM.
THE COURT: AND THAT PARK PROGRAM OR THAT STREET PROGRAM DOESN'T HAVE ANYTHING TO DO WITH THIS.
MS. SMITH: THAT'S RIGHT. BUT WHAT HAPPENED WAS, IF GROVE CITY -
THE COURT: IS THERE ANY AUTHORITY THAT SAYS IF YOU GET IT FOR ANY PURPOSE THEN ANYTHING THAT YOU DO IS SUBJECT TO TITLE 6.
MS. SMITH: YES, YOUR HONOR. IN FACT GROVE CITY V. BELL IS NO LONGER GOOD LAW BECAUSE CONGRESS AMENDED TITLE 6 SPECIFICALLY TO OVERRULE THAT DECISION AND TO SAY THAT'S NOT WHAT WE MEANT. WE MEANT IF THE UNIVERSITY GETS FUNDS FOR ITS SCIENCE PROGRAMS AND RESEARCH FACILITIES THEN IT GOVERNS THROUGHOUT THE ENTIRE.
THE COURT: READ ME THAT LANGUAGE.
MS. SMITH: I'M SORRY, YOUR HONOR, I THINK I HAVE A

CASE THAT SUPPORTS THAT HERE IN MY FOLDER IF YOU WILL BEAR WITH ME. I MAY NOT HAVE IT IN FRONT OF ME. I CERTAINLY CAN

[TRANSCRIPT OF HEARING 25]

PROVIDE IT TO THE COURT LATER. AND THERE ARE CASES THAT HAVE HELD THAT THAT IS EXACTLY WHAT - WHAT CONGRESS DID WHEN IT AMENDED TITLE 6 AND THAT IT DOES MEAN IT TO APPLY THROUGHOUT THE UNIVERSITY.

(PAUSE.)

MS. SMITH: I'S SORRY, I KNOW I HAVE IT BACK IN THE OFFICE AND I DIDN'T BRING IT TO THE COURT HOUSE WITH ME TODAY.

BUT CONTINUING ON, ASSUMING THAT THAT IS THE LAW, AND THAT IT DOES APPLY TO THE CITY AND THE SOLICITOR'S OFFICE, THEN THAT CHOICE TO IMPLEMENT ONLY AT MUSC WAS A VERY SIGNIFICANT CHOICE.

I THINK THE SECOND CHOICE WAS TO APPLY THE POLICY ONLY TO ILLEGAL DRUGS RATHER THAN TO SAY ALCOHOL OR CIGARETTES, WHICH AS WE HAVE TESTIMONY DURING THE TRIAL ARE JUST AS HARMFUL AS ILLEGAL DRUGS IN SOME INSTANCES. I DON'T THINK WE KNOW THE EXACT IMPACT OF THAT DECISION ON AFRICAN AMERICANS. WE DON'T HAVE A BREAKDOWN FROM THE MEDICAL

UNIVERSITY OF - WE HAD PEOPLE WHO TESTED POSITIVE FOR ALL DRUGS INCLUDING CIGARETTES, ALCOHOL AND ALL ILLEGAL DRUGS, AND WE NEVER HAD SOMETHING THAT BROKE OUT CIGARETTES AND ALCOHOL AND COULD BREAK DOWN BY RACE THAT WAY, SO I DON'T THINK WE REALLY KNOW WHAT THE IMPACT WAS THERE.

THE THIRD DECISION WAS TO ONLY APPLY THE POLICY TO PEOPLE WHO TESTED POSITIVE FOR COCAINE. AND THAT CLEARLY WAS

[TRANSCRIPT OF HEARING 26]

A SECOND MOST SIGNIFICANT DECISION WHERE WHEN WE APPLY THE POLICY TO COCAINE USERS WE HAVE A GROUP OF PEOPLE THAT WAS 90 PERCENT AFRICAN AMERICAN VERSUS 10 PERCENT WHITE, AND WE COMPARE THAT TO THE GENERAL POPULATION AT MUSC WHICH WAS ABOUT 67/33. SO THERE WAS A VERY SIGNIFICANT DIFFERENCE BETWEEN THOSE TWO POPULATIONS.

THE COURT: WHAT IS THE COCAINE FIGURE?

MS. SMITH: THE COCAINE FIGURE WAS 120 WOMEN OUT OF 133 COCAINE POSITIVES WERE AFRICAN AMERICANS AND THAT EQUALS 90 PERCENT. AND 13 OF 133 WERE WHITE, OR 10 PERCENT.

THE FOURTH DECISION POINT HERE WAS THE USE OF

SUBJECTIVE CRITERIA IN ORDER TO DETERMINE WHO TO TEST. ONCE WE DECIDE WE'RE TESTING AT MUSC, ONCE WE DECIDE WE'RE TESTING FOR DRUGS, THEN WE DECIDE WE'RE TESTING FOR COCAINE. OKAY, NOW WHICH OF THESE WOMEN ARE WE GOING TO TEST FOR COCAINE.

THE COURT: YOU'RE SUGGESTING THAT THE USE OF SUBJECTIVE CRITERIA WOULD BE BETTER THAN OBJECTIVE?

MS. SMITH: NO, QUITE THE OPPOSITE. I'M SUGGESTING THAT THE USE OF SUBJECTIVE CRITERIA WAS ANOTHER DECISION POINT THAT RESULTED IN A DISPARATE IMPACT ON AFRICAN AMERICAN WOMEN, AND WE HAVE EVIDENCE OF TWO SOURCES FOR THAT. THE FIRST -

THE COURT: WELL, IS THERE ANY QUESTION BUT THAT THOSE CONCERNS THAT ARE EVIDENCED BY THE CRITERIA ARE LEGITIMATE MEDICAL CONCERNS?

MS. SMITH: THERE IS QUESTION ABOUT THAT. IN FACT

[TRANSCRIPT OF HEARING 27]

DOCTOR CHASNOFF TESTIFIED THAT SAYING LACK OF PRENATAL CARE, FOR EXAMPLE, WAS NOT THE APPROPRIATE CRITERIA TO USE IN DETERMINING WHO TO TEST FOR DRUGS BECAUSE WHAT THAT DID WAS THAT IT HIGHLIGHTED WHO IS LOW INCOME, WHO DOESN'T HAVE

MEDICAL CARE, WHO IS A DRUG USER. AND THAT WHEN YOU DO THAT, WHEN YOU USE CRITERIA LIKE THAT THAT ARE SO SUBJECTIVE AND OPEN ENDED, YOU END UP TESTING AFRICAN AMERICAN WOMEN AT A MUCH GREATER RATE.

THE COURT: BUT THE - WASN'T IT DOCTOR HORGER.

MS. SMITH: I'M SORRY.

THE COURT: WAS IT DOCTOR HORGER, WASN'T HE THE DOCTOR FROM THE MEDICAL UNIVERSITY THAT WAS ONE OF THE FIRST ONES TO DEVELOP THE PROGRAM?

MS. SMITH: YES.

THE COURT: AND AS I RECALL IT, HE TESTIFIED THAT THE FACT THAT THEY HAD EVIDENCE OF THESE PROBLEMS IN PREGNANT WOMEN, THESE PROBLEMS BEING THE ONES THAT ARE IDENTIFIED IN THE CRITERIA, THE FACT THAT THOSE PROBLEMS WERE PREVALENT IN THE POPULATION OF THE MEDICAL UNIVERSITY, LED THEM TO THIS PROGRAM.

MS. SMITH: I THINK HE DID TESTIFY.

THE COURT: AND THEY WANTED TO FIND OUT WHY THEY WERE HAVING THESE PROBLEMS. THEY SAW THERE WAS SOME RELATIONSHIP BETWEEN THOSE PROBLEMS AND COCAINE USE AND THAT THAT IS WHAT LED TO THEM. NOW, IS THERE ANY EVIDENCE THAT

[TRANSCRIPT OF HEARING 28]

THAT WASN'T TRUE?

MS. SMITH: WELL I THINK DEFINITELY THERE IS EVIDENCE THAT THE USE OF CRITERIA INADEQUATE PRENATAL CARE AND LACK OF PRENATAL CARE WERE NOT COORDINATED PROPERLY WITH COCAINE USE. WE DON'T KNOW THAT THEY WERE. THERE IS NO EVIDENCE THAT THEY WERE. PERHAPS SOMETHING LIKE INTRAUTERINE GROWTH RETARDATION OR PLACENTA PREVIA.

THE COURT: IS THERE ANY EVIDENCE THAT THAT WASN'T A LEGITIMATE CONCERN OF THE MEDICAL STAFF.

MS. SMITH: I THINK DEFINITELY ANYONE WHO DOESN'T HAVE PRENATAL CARE, THAT IS A CONCERN AND YOU WANT TO GET PEOPLE PRENATAL CARE, BUT THERE IS DIFFERENCE IN SAYING YOU SHOULD GET INTO PRENATAL CARE AND LET'S MAKE SURE THAT YOU HAVE IT, THAN SAYING THAT MAKES YOU MORE LIKELY TO BE LIKELY A DRUG USER. WHAT IT IS MORE LIKE IS, IS THAT YOU'RE AFRICAN AMERICANS AND POOR.

THE COURT: WOULD THE SAME THING APPLY TO CAUCASIANS AND POOR AND NOT HAVE INSURANCE PROGRAMS?

MS. SMITH: IT WOULD. IT WOULD APPLY - POOR PEOPLE IN GENERAL ARE MORE LIKELY NOT TO HAVE INSURANCE PROGRAMS.

THE COURT: I WOULD THINK THERE IS NO REAL QUESTION.
MS. SMITH: THAT IS ABSOLUTELY A QUESTION. BUT WHAT IS ALSO TRUE IF YOU'RE AFRICAN AMERICAN YOU'RE MORE LIKELY TO BE POOR THAN IF YOU'RE WHITE. THERE IS DISPROPORTIONATE IMPACT WHEN YOU - WHEN YOU FOCUS ON POOR PEOPLE THAT COMES

[TRANSCRIPT OF HEARING 29]

OUT ON AFRICAN AMERICAN PEOPLE BY ITSELF. THE OTHER PIECE OF THAT THAT DR. CHASNOFF TESTIFIED, AND I THINK THAT IS SUBSTANTIATED BY THE EVIDENCE, THE NUMBERS THAT WE HAD, IS THAT WHEN YOU HAVE SUBJECTIVE CRITERIA PEOPLE ARE GOING TO - THEY'RE GOING TO TEST AFRICAN AMERICAN PEOPLE MORE BECAUSE THEY CORRELATE THEM WITH DRUG USE, EVEN IF IT'S NOT TRUE. AND THAT PEOPLE'S SUBJECTIVE BELIEF AND SUBJECTIVE, LET'S CALL IT RACISM, COMES OUT IN THAT WAY. AND IT MAY NOT BE INTENTIONAL, IT MAY NOT BE MALEVOLENT, BUT THERE IS AN ASSUMPTION. AND THAT'S BORNE OUT FIRST BY DR. CHASNOFF'S STUDY IN WHICH THEY FOUND THAT AFRICAN AMERICANS WERE TEN TIMES MORE LIKELY TO BE TESTED FOR DRUGS, REPORTED TO THE POLICE AND HAVE THEIR CHILDREN TAKEN AWAY THAN WERE SIMILARLY SITUATED CAUCASIAN

FOLK.

AND NOT ONLY THAT, WE ALSO SAW IN THE NUMBERS OF WOMEN TESTED FOR DRUGS, AFTER THE POLICY WAS IMPLEMENTED, THAT THERE WAS A - THERE WAS A HUGE INCREASE UP TO 75 PERCENT OF THE PEOPLE BEING AFRICAN AMERICAN. SO THAT AFRICAN AMERICANS BEGAN TO BE TESTED AT A MUCH GREATER RATE AS SOON AS THE SUBJECTIVE CRITERIA WAS IMPLEMENTED. WHICH I THINK SUBSTANTIATES WHAT I THINK REALLY MAKES SENSE TO ME, WHICH IS WHEN YOUR SUBJECTIVE BELIEFS ARE ALLOWED TO GOVERN AN ASSOCIATION LIKE THAT, WHEN YOU DON'T JUST USE OBJECTIVE MEDICAL CRITERIA, BUT YOU OPEN IT UP, THEN YOUR SUBJECTIVE PREJUDICES, BENIGN OR MALEVOLENT -

[TRANSCRIPT OF HEARING 30]

THE COURT: WHAT DO YOU MEAN BY OPEN IT UP? WHAT DO YOU MEAN BY THAT?

MS. SMITH: WHEN YOU USE A CRITERIA LIKE INADEQUATE PRENATAL CARE OR LACK OF PRENATAL CARE, YOU ALLOW SUBJECTIVE BELIEF TO COME IN. ALLOW THE DECISION MAKER TO MAKE A DECISION BASED ON WHAT THEY THINK IS RIGHT. AND WHEN YOU ALLOW SUBJECTIVE BELIEFS TO COME IN, THEN SUBJECTIVE PREJUDICE

COMES IN. AND THAT IS ONE OF THE THINGS THAT TITLE 6 WAS DESIGNED TO PROTECT AGAINST, AND TITLE 7 AND ALL OF THE REST OF THE CIVIL RIGHTS STATUTES WERE DESIGNED TO PROTECT NOT ONLY AGAINST INTENTIONAL DISCRIMINATION, BUT ALSO AGAINST THE PREJUDICES THAT WE HOLD AND THAT INFLUENCE THE WAY WE BEHAVE.

AND I THINK THAT CARRIES INTO WHAT I SEE AS THE LAST DECISION POINT IN THE POLICY. WHICH IS THE DECISION OF WHO GETS ARRESTED. AND THAT DECISION WHICH NURSE BROWN DISCUSSED AND TALKED ABOUT, AND SHE TALKED ABOUT THE - IN SOME CASES HER ABILITY TO PUT SOMEBODY INTO AN ALTERNATIVE TREATMENT PROGRAM SO THAT THEY WOULDN'T GET ARRESTED. AND WE SAW THE DIFFERENCE IN TREATMENT BETWEEN SOMEBODY LIKE CRYSTAL FERGUSON AND DARLENE NICHOLSON AND WHO WAS ARRESTED AND WHO WAS GIVEN A TREATMENT PROGRAM, WHO WAS WORKED WITH MORE FULLY AND WHO WAS NOT, THAT THAT IS ANOTHER AREA IN WHICH SUBJECTIVE BELIEFS CAME IN. AND, AGAIN, WE SEE THE DISPROPORTIONATE IMPACT ON AFRICAN AMERICANS.

NOW EACH ONE OF THESE POINTS I THINK STANDING ALONE

[TRANSCRIPT OF HEARING 31]

COULD BE GROUNDS FOR A TITLE 6 CLAIM. BUT, ALL TOGETHER, ALL FIVE OF THESE POINTS, OR FOUR, IF YOU TAKE OUT THE ONE POINT WHERE WE'RE NOT SURE WHAT THE DISPROPORTIONATE IMPACT IS, THAT IS CHOOSING ILLEGAL DRUGS RATHER THAN JUST ALL HARMFUL SUBSTANCES, EVEN IF YOU TAKE THAT ONE OUT AND YOU'RE LEFT WITH JUST THOSE FOUR, ALL FOUR TOGETHER RESULTED IN THE POLICY THAT WE HAD WHERE 30 OF THE WOMEN - THERE WERE 30 WOMEN ARRESTED AND 28 WERE AFRICAN AMERICAN, ONE THERE WAS DISPUTE ABOUT EVEN THOUGH SHE CALLS HERSELF AFRICAN AMERICAN AND OTHERS CALL HER WHITE AND SOMETIMES SHE MIGHT CHECK ONE BOX AND SOMETIMES ANOTHER. AND THEN WE HAVE THE WHITE WOMEN WHO WAS ASSOCIATED WITH A BLACK PERSON. SO WE END UP WITH A - WITH, FROM A GROUP THAT WAS ALREADY DISPROPORTIONATE, WHICH IS THE COCAINE POSITIVE GROUP OF 90 PERCENT AFRICAN AMERICAN, THEN WE GET THE ARRESTED POPULATION, WHICH END UP BEING EITHER A HUNDRED PERCENT OR CLOSE TO IT AFRICAN AMERICAN.

I THINK THAT HAS A DEVASTATING IMPACT AND THERE WERE EASY WAYS FOR THE MEDICAL UNIVERSITY TO AVOID THAT. THEY COULD HAVE TESTED EVERY PREGNANT WOMEN FOR ILLEGAL

SUBSTANCES. THEY COULD HAVE TESTED EVERY PREGNANT WOMEN FOR ALL HARMFUL SUBSTANCES AND REPORTED THEM TO DSS AND INITIATED AN INVESTIGATION INTO WHETHER THERE WAS REALLY AN ABUSE GOING ON THERE. WHY NOT TEST EVERYONE IF IT'S SUCH A HUGE PROBLEM? AS LONG AS YOU GET THEIR CONSENT FIRST, IF YOU'RE GOING TO USE IT FOR CRIMINAL PURPOSES OF COURSE. BUT I JUST - I SEE ONE

[TRANSCRIPT OF HEARING 32]

DECISION AFTER ANOTHER, AND THE GROUP OF PEOPLE TARGETED GETTING SMALLER AND SMALLER AND MORE AND MORE AFRICAN AMERICAN WOMEN IN THAT GROUP AS WE GO.

THE COURT: OKAY.

MR. HOOD: THANK YOU.

MS. SMITH: YOUR HONOR, IF I CAN MAKE ONE OTHER COMMENT. I THINK INJUNCTIVE RELIEF IS ALSO RELEVANT TO THE TITLE 6 CLAIM.

THE COURT: SURE.

MR. HOOD: GOOD MORNING.

JOE WILSON BRIEFED THE TITLE 6 ISSUES, AND HE IS A PARTNER IN MY OFFICE AND HE WILL ADDRESS THOSE WHEN I SIT DOWN.

IN TO ANSWER YOUR QUESTION, I DON'T KNOW. WE ARE NOT AWARE OF ANY PLANS TO REINSTITUTE THE POLICY.

THE COURT: COUNSEL FOR THE PLAINTIFFS' SAID THAT DURING THE TRIAL, AND CORRECT ME IF I MISSTATE WHAT SHE SAID, IT WAS ASSERTED BY THE DEFENDANT THAT THEY WERE GOING TO REINSTITUTE THE POLICY. AND I DIDN'T RECALL ANY.

MR. HOOD: THERE IS NO PROOF OF THAT IN THE RECORD AND I HAVE NO KNOWLEDGE OF THAT.

THE COURT: OKAY. AND THERE WAS SOME STATEMENT THAT WAS QUOTED IN THE PAPER FROM MR. CONDON AND THAT NOT ONLY WAS HE GOING TO REINSTATE IT, BUT HE WAS GOING TO DO IT STATEWIDE AFTER HE GOT A VERDICT FOR THE DEFENDANTS.

[TRANSCRIPT OF HEARING 33]

MR. HOOD: HE IS TALKING ABOUT WORKING WITH THE SOLICITORS AND DEALING WITH THE PROBLEMS STATEWIDE. HE IS NOT TALKING ABOUT THE MEDICAL UNIVERSITY. AND IT IS A HUGE MONEY PROBLEM FOR THE PEOPLE OF THIS STATE THAT SHOULD BE ADDRESSED. BUT EVERYBODY IS WAITING ON HOW SHOULD WE ADDRESS IT CONSTITUTIONALLY. WE WANT TO DO IT RIGHT. AND THAT'S ALL.

THE MEDICAL UNIVERSITY, THERE IS NO FUTURE PLAN THAT I'M AN AWARE OF, AND I WOULD BE CONTACTED I'M SURE, THERE

IS NOTHING IN THE RECORD ABOUT IT. THIS SCAN REPORT, IT DOESN'T EXIST ANYMORE. THAT PROGRAM IS OVER WITH. MS. HILDEBRAND WASN'T A POLICYMAKER, SHE WAS A NURSE. THE MEDICAL UNIVERSITY HAS NO POLICY TO DISSEMINATE THIS TYPE OF INFORMATION, AND OF COURSE IT WASN'T DISCLOSED TO THE GENERAL PUBLIC.

AS TO PROCREATION, NO ONE WAS NOR DOES THE RECORD REFLECT THAT ANYONE WAS THREATENED WITH STERILIZATION OR ARREST. AND MS. NICHOLSON IS THE ONLY ONE THEY POINT TO UPON THE SUBJECT OF PROCREATION. SHE SIGNED THE CONSENT FORM, SHE TESTIFIED THAT NO ONE FORCED HER TO SIGN IT. DOCTOR NEUMAN TESTIFIED THAT IT IS THE POLICY OF THE MEDICAL UNIVERSITY TO REQUIRE CONSENT BEFORE AND DURING AN OPERATION. SHE HAD AN OPERATION. THERE IS NO WAY IN TH[illegible] WORLD, AND WE CLEARLY PROVED, THAT SHE WOULD NOT HAVE HAD THAT NORPLANT INSERTED WITHOUT HER CONSENT AND PERMISSION.

[TRANSCRIPT OF HEARING 34]

AND OF COURSE THERE IS NO LIKELIHOOD OF WHATEVER THEY'RE CLAIMING TO BE REPEATED ANYWAY. DOCTOR NEUMAN ALSO EXPLAINED THAT IT'S COMMON FOR AN OBSTETRICIAN TO TALK TO HIS

PATIENT AFTER THE DELIVERY OF A CHILD ABOUT BIRTH CONTROL.
AND THAT'S THE STANDARD OF CARE AND THAT'S WHAT A DOCTOR
SHOULD DO.
THEN YOU ASK AT THE LAST HEARING, I WAS OUT OF TOWN
AND THAT'S WHY I WASN'T HERE, MS. SHOWERS ADDRESSED IT AND WE
HAVE NOW BRIEFED IT FOR YOU IN DETAIL ABOUT THE THREE
PLAINTIFFS. AND MS. SHOWERS COULD GO THROUGH THE DETAILS OF
ANY ONE OF THE PLAINTIFFS THAT YOU'RE INTERESTED IN AS TO WHY
WE ARE ABSOLUTELY CERTAIN THIS RECORD PROVES EACH AND EVERY
PLAINTIFF WAS EITHER AWARE OF THE POLICY, OR TWO OF THEM DID
NOT COME WITHIN THE POLICY, THEREFORE THE CONDUCT OF THE
MEDICAL UNIVERSITY WAS NOT AN ACTOR UNDER THE FOURTH
AMENDMENT.
I THINK AS I WAS PREPARING TO TALK TO YOU ON THIS
ARGUMENT TODAY, I THINK IT'S IMPORTANT FOR US TO LOOK BACK AT
WHAT THE FOURTH CIRCUIT SAYS WE'RE DOING HERE AT A JNOV
PROCEEDING. THE WINANT V BOSTIC CASE, '93 FOURTH CIRCUIT
OPINION, I'M SURE YOUR HONOR IS FAMILIAR WITH, I JUST THINK
THE STANDARD OUGHT TO BE SINCE WE SPENT SO MUCH TIME TRYING
THIS CASE AND THERE IS SO MUCH IN THE RECORD, AND I HAVE JUST

HEARD ARGUMENT FROM COUNSEL WITH A LOT THAT IS NOT IN THE RECORD, THAT WE'LL POINT OUT IN A LITTLE BIT, AND WHERE WE ARE

[TRANSCRIPT OF HEARING 35]

RIGHT NOW IS THE LIGHT MOST FAVORABLE TO THE NONMOVING PARTY DRAWING EVERY LEGITIMATE INFERENCE IN THAT PARTY'S FAVOR. AND THE JUDGE MUST DETERMINE THAT THE ONLY CONCLUSION A REASONABLE TRIER OF FACT COULD DRAW FROM THE EVIDENCE IS IN FAVOR OF THE , MOVING PARTY.

DR. NEUMAN, UNCONTROVERTED, TESTIFIED UNDER OATH THAT EVERY PERSON WAS GIVEN EXHIBIT 10. EVERY PERSON KNEW ABOUT THE POLICY. AND TWO OF THEM WERE TESTED BEFORE THE POLICY, SO THE POLICY DOESN'T APPLY TO THEM. THEY DON'T HAVE A FOURTH AMENDMENT CLAIM BECAUSE THERE WAS NO ACTION AS THE FOURTH AMENDMENT PERSON BY THE MEDICAL UNIVERSITY PEOPLE, THEY WERE DOING WHAT THE CHILD ABUSE STATUTE REQUIRED THEM TO DO. YOU WERE CITED -

THE COURT: EXPLAIN THAT TO ME. IF YOU DON'T HAVE A POLICY, YOU DON'T HAVE A POLICY. BUT YOU TAKE SOMEBODY AND YOU TEST THEM WITH THE INTENTION OF GIVING THAT TO THE LAW ENFORCEMENT PEOPLE IF THEY DON'T GO INTO COUNSELING IF IT'S

POSITIVE, WHAT IS THE DIFFERENCE?
MR. HOOD: THEY DON'T TAKE IT WITH THE INTENTION OF GIVING IT TO ANYONE. THEY DO THE URINE DRUG SCREEN.
THE COURT: EVERY ONE OF THESE PLAINTIFFS, THE DRUG SCREENS WERE TAKEN WITH THE UNDERSTANDING THAT IF THEY WERE POSITIVE THEY WERE GOING TO GIVE IT TO THE SOLICITOR OR CHIEF OF POLICE OR WHOEVER THEY GAVE IT TO, RIGHT?
MR. HOOD: NO, SIR. TWO OF THEM WERE GIVEN URINE

[TRANSCRIPT OF HEARING 36]

DRUG SCREENS BEFORE THE POLICY WAS IN EFFECT. THE SOLICITOR WASN'T A FACTOR.
THE COURT: WHICH TWO ARE THOSE?
MR. HOOD: THAT'S THE TWO - YOU WERE INTERESTED IN THREE INDIVIDUALS AT THE LAST HEARING. AND THESE ARE TWO OF THOSE INDIVIDUALS WHICH ARE MRS. SINGLETON - I'M SORRY. MRS. POWELL AND MRS. GRIFFIN. POWELL WAS TESTED ON 10/13/89 BEFORE THE POLICY. GRIFFIN WAS TESTED OF 10/7/89 BEFORE THE POLICY.
SO WE ARE JUST TAKING THEIR ARGUMENT ABOUT THOSE TWO INDIVIDUALS AND SAYING, OKAY, IF YOU'RE CORRECT IT'S BEFORE THE POLICY, THERE IS NO AGREEMENT TO DO ANYTHING WITH THE

SOLICITOR, IT'S MERELY MEDICAL PROCEDURE. IF IT'S POSITIVE UNDER THE CHILD REPORTING STATUTE THEY'RE DOING THEIR JOB AND REPORTING AND THAT'S ALL THAT OCCURRED. THERE IS NO FOURTH AMENDMENT ACTOR INVOLVED.

MRS. SINGLETON IS IN THE ONLY CATEGORY OF A PERSON AND SHE WAS THE THIRD ONE YOU WERE INTERESTED IN. SHE WAS TESTED 11/9/89, BUT SHE RECEIVED EXHIBIT 10. AND SHE KNEW SHE WAS GOING TO BE TESTED. IN FACT HER RECORDS SAY THAT SHE GAVE PERMISSION BECAUSE SHE THOUGHT SHE WAS CLEAN, AND THAT'S IN QUOTATIONS. THAT'S EXHIBIT 180 THAT IS IN EVIDENCE. SHE WAS - SHE WAS ARRESTED AFTER MS. KNIGHT, IT WAS ALL OVER THE TELEVISION LOCALLY. SHE WAS AWARE OF THAT. SHE ADMITTED UNDER OATH THAT SEEING THE TELEVISION SHOW. SHE WAS AWARE OF THE HARM TO HER FETUS TO USE COCAINE. THAT'S AT PAGE 28 OF

[TRANSCRIPT OF HEARING 37]

THE TESTIMONY OF BROWN. THE - SHE SIGNED THE GENERAL CONSENT FORM AND AMBULATORY CARE FORM.

AND THAT REALLY IN A NUTSHELL ANSWERS WHAT YOU WERE INTERESTED IN I THINK AT THE LAST HEARING ABOUT THE THREE INDIVIDUALS. ALL OF THE OTHERS CLEARLY WERE AWARE OF IT. ALL

OF THE OTHERS, UNREFUTED TESTIMONY BY DOCTOR NEUMAN, GOT EXHIBIT 10. ALL WOMEN WERE INFORMED OF THE POSSIBILITY OF TURNING OVER THE RESULTS TO THE POLICE PRIOR TO GIVING A SAMPLE. DOCTOR NEUMAN, PAGE 279 OF HIS TESTIMONY. UNREFUTED IN THE RECORD.

THAT'S WHAT WE ARE DEALING WITH WHEN WE TALK ABOUT INFERENCES IN THE LIGHT MOST FAVORABLE OR NOT FAVORABLE. THE POLICY BEGAN 10/1/89, ACCORDING TO DOCTOR NEUMAN, PAGE 198. REASONABLE INFERENCE THAT THE PLAINTIFFS RECEIVED EXHIBIT 10 AND HAD KNOWLEDGE PRIOR TO TESTING AND IN THE ARREST.

I REALLY - I MEAN, IT WAS A LONG CASE. LET ME MAKE SURE I HAVE COVERED WHAT I - THERE WAS SOME NOTE ABOUT MS. KNIGHT, I THINK I SHOULD ANSWER THOSE FOR YOU. SHE WAS TESTED EARLIER IN THE POLICY. SHE DID NOT TEST POSITIVE. THEY TESTED HER BABY. AND THEN THERE WERE SOME CONVERSATIONS ABOUT A CASE CALLED WILDER VERSUS FREDRICK COUNTY. THE CASE DOESN'T STAND FOR WHAT COUNSEL CITED IT FOR. I HAVE GOT A COPY THAT I'LL BE GLAD TO HAND IT UP.

WHAT IT DOES SAY IS WHAT WE HAVE BEEN TALKING ABOUT, AND THAT IS CHILD ABUSE, IF IT'S BEFORE THE POLICY, THE FOURTH

[TRANSCRIPT OF HEARING 38]

CIRCUIT SAYS, AND THEY CITE A 7TH CIRCUIT OPINION, VICTIM OF CHILD ABUSE, I'M QUOTING ON PAGE 373, CAN ONLY BE UNDERTAKEN WHEN THE STANDARDS OF PROBABLE CAUSE ARE WARRANTED. THE DISTRICT COURT PROPERLY DECIDED THE MEDICAL EXAMINATION OF THE CHILDREN DID NOT VIOLATE PLAINTIFF'S RIGHTS.

AND THAT'S WHAT WE'RE TALKING ABOUT WITH MS. KNIGHT. AND IF SHE WAS ARRESTED BEFORE EXHIBIT 10, THAT WAS BEFORE THE POLICY AND SHE DOESN'T COME WITHIN THE POLICY. MS. PEAR WAS THE OTHER ONE SHE MENTIONED. SHE WAS, AND IT'S IN THE RECORD, SHOWN EXHIBIT 10, AND THAT'S BEEN PROVEN AND IT'S UNREFUTED IN THE RECORD. THAT WAS ON 7/23/1990.

LEGAL ARGUMENT ON THE TITLE 6 WILL BE FOR MR. WILSON. WE HAVE GOT BLOWUPS, WE HAVE GOT EVERYTHING THAT WE THINK THAT WAS OF INTEREST TO YOU READY TO TALK ABOUT, BUT I DON'T WANT TO OVERDO IT. IF YOU DON'T WANT TO HEAR IT, I'M GOING TO SIT DOWN.

THE COURT: OKAY.

MR. HOOD: IF THERE IS A QUESTION WE CAN ANSWER, JUST TELL US BECAUSE WE CAN ANSWER EVERY QUESTION THAT YOU HAVE GOT.

I HAVE GOT ONE QUESTION, YOUR HONOR. YOU MENTION YOU MAY AFTER TODAY DECIDE TITLE 6. WOULD YOU LIKE FOR COUNSEL ON BOTH SIDES TO PREPARE CONCLUSIONS AND FINDINGS OF LAW AND FINDINGS OF FACT?

THE COURT: IF YOU HAVE GOT THEM I'LL TAKE THEM.

[TRANSCRIPT OF HEARING 39]

MR. HOOD: I MEAN, AFTER TODAY'S HEARING. WE HAVE DONE SOME, BUT DO YOU WANT US TO DO MORE THAN WE HAVE DONE?

THE COURT: LET ME THINK ABOUT IT.

MR. HOOD: WE JUST WANT TO HELP.

MS. SHOWERS: IF I COULD JUST ADD ONE THING, OR ACTUALLY TWO THINGS. MS. PEAR TESTIFIED THAT SHE RECEIVED THE JOINT 10 AND THEY CONTEND THIS WAS AFTER SHE TESTED POSITIVE. BUT I THINK THE TESTIMONY OF MS. HILDEBRAND, SHE IS THE ONE THAT PRESENTED JOINT 10 WHEN SHE WAS COVERING FOR SHIRLEY BROWN. IN AN EXERCISE OF CAUTION AND THE INFERENCE THERE SHE HAD ALREADY RECEIVED JOINT 10 WHEN SHE REGISTERED FOR PRENATAL CARE, WHICH THERE IS NO QUESTION ABOUT, AND ALSO SAID THAT SHE WAS AWARE OF WHAT WAS GOING ON AT THE MEDICAL UNIVERSITY ANYWAY.

DOCTOR NEUMAN SAID THAT THE POLICY BEGAN ON 10/1, BUT HE MEANT THAT THAT IS WHEN THE MEDICAL UNIVERSITY BECAME AWARE THAT THEY HAD TO REPORT UNDER THE STATUTE THAT THERE WAS MANDATORY REPORTING. IN OTHER WORDS, THERE WAS NO POLICY OF AMNESTY OR SOMETHING LIKE THAT CAME LATER WHEN THE SOLICITOR AND THE POLICE DEPARTMENT TO NOT HAVE THESE WOMEN ARRESTED RIGHT AWAY. SO, THERE WAS NO FOURTH AMENDMENT IMPLICATION, THE DOCTORS WERE DOING IT FOR MEDICAL REASONS, BUT THEY HAD TO REPORT IT, IT WAS BECAUSE OF THESE ARRESTS THAT THE POLICY WAS DEVELOPED SO THAT THESE WOMEN -

THE COURT: I THOUGHT, AND I DON'T HAVE A - MY

[TRANSCRIPT OF HEARING 40]

NOTES RIGHT IN FRONT OF ME, I HAVE THEM AVAILABLE, I THOUGHT THAT THE POLICY FOR TESTING FOR MEDICAL PURPOSES WAS TERMINATED IN JUNE OR JULY OF '89?

MS. SHOWERS: TERMINATED? YOU MEAN INTERAGENCY POLICY INITIATED?

THE COURT: NO. I THOUGHT IT WAS INITIATED PRIOR TO THAT AND THE TESTIMONY WAS THAT IT DID NOT WORK.

MS. SHOWERS: NO, SIR.

THE COURT: ON A VOLUNTARY BASIS, AND THAT'S WHY

THEY WENT INTO THIS BUSINESS OF GETTING AN AGREEMENT WITH THE SOLICITOR.

MS. SHOWERS: WELL, AS I RECALL DOCTOR HORGER TESTIFIED THAT HE BECAME AWARE OF ALL OF THIS MEDICAL EVIDENCE, AT A SEMINAR AND HE CAME BACK AND DEVELOPED SOME SORT OF GUIDELINE THAT THESE ARE THE PEOPLE THAT WOULD BE TESTED. AND THEN WHEN THEY HAD ALL OF THESE TESTS COME UP POSITIVE, AND REFERRING WOMEN TO TREATMENT AND THEY DIDN'T GET ANYONE TO GO, THAT THEY THEN SAID WE HAVE GOT TO DO SOMETHING.

THE COURT: WHEN DID THAT - WHAT IS THAT DATE?

MS. SHOWERS: IT WAS INTO OCTOBER. IT CAME AFTER HUGO AT SOME POINT. BUT ALSO THERE WAS TESTIMONY THAT MR. GOOD, THE GENERAL COUNSEL, TELEPHONED THE SOLICITOR'S OFFICE TO DETERMINE IF THEY HAD TO REPORT THIS BECAUSE THEY BECAME AWARE OF IT.

SO YOU HAVE THIS GOING ON AT THE HOSPITAL, THESE

[TRANSCRIPT OF HEARING 41]

POSITIVE SCREENS. AND THEY HAVE TO REPORT IT. AND THE WOMEN GOING TO JAIL AND THEY'RE NOT GETTING TREATMENT. SO - I'M SORRY. THAT THEY DEVELOPED THIS POLICY OF AMNESTY WHICH

BECAME THE POLICY, WHICH IS WHEN JOINT 10 WAS ESTABLISHED TO TELL THESE WOMEN WE'RE CONCERNED ABOUT DRUG USE AND IF YOU DON'T GET TREATMENT YOU'RE GOING TO HAVE TO DO SOMETHING ABOUT IT. AND THE GUIDELINES CAME OUT AND THE POLICY WAS APPROVED AT THE MEDICAL UNIVERSITY IN I BELIEVE LATE NOVEMBER. I THINK THE POLICE HAD SOME GUIDELINES SOMETIME IN OCTOBER, BUT BY EVERYONE'S ADMISSION, EVEN IN THE PLAINTIFFS' BRIEF, GRIFFIN, POWELL AND SINGLETON, AND I THINK THEY EVEN SAY MS. KNIGHT, WERE BEFORE THE POLICY.

IF THEY'RE BEFORE THE POLICY, THEN THERE IS NO JOINT 10 AND THERE IS NO FOURTH AMENDMENT. AFTER THE POLICY THERE IS A JOINT 10, AND NOTE BY THE DOCTORS TELLING THEM THAT THEIR URINE WOULD BE TURNED OVER, WHICH IS DOCTOR NEWMAN'S TESTIMONY.

THE COURT: OKAY.

MS. SHOWERS: THANK YOU.

MS. SMITH: YOUR HONOR, I CERTAINLY AGREE THERE WAS NO JOINT 10 AT THE TIME, BUT IT'S THE FIRST TIME I HEARD THERE WAS NO POLICY UNTIL THE POLICY WAS CHANGED AND PEOPLE WERE ALLOWED AMNESTY.

THE COURT: LET ME HEAR FROM YOU HIM AND THEN I'LL COME BACK TO YOU.

[TRANSCRIPT OF HEARING 42]

MS. SMITH: OKAY. I'M SORRY.
MR. WILSON: I'LL TRY TO BE BRIEF JUST ON TITLE 6.
FIRST OF ALL I JUST WANT TO MAKE SURE OUR POSITION IS CLEAR.
IT'S OUR UNDERSTANDING THAT TITLE 6, WHEN THERE IS NO FINDING OF A DISCRIMINATORY INTENT, TITLE 6 ONLY GRANTS INJUNCTIVE RELIEF, NO DAMAGE RELIEF. SO WE'RE TALKING ABOUT JUST INJUNCTIVE RELIEF ON THE TITLE 6 RIGHT NOW, AND THAT'S GUARDIANS ASSOCIATION THE SUPREME COURT CASE. AND THERE IS A FOURTH CIRCUIT CASE, THE PANDAZIDES CASE.
I THINK IT'S IMPORTANT TO REMEMBER THAT WE DO HAVE A JURY FINDING OF NO INTENTIONAL DISCRIMINATION THAT CAN FORM OUR INQUIRY INTO THE DISPARATE IMPACT. REVIEWING THE STATISTICIANS' TESTIMONY, THEY REALLY SEEM TO BE IN AGREEMENT THAT THE DIFFERENCE THAT THERE WAS A DISPARATE - THE REASON THERE WAS A DISPARATE IMPACT HERE IS BECAUSE THE POLICY WAS AT MUSC, AND BECAUSE THERE WAS A FOCUS ON THE USE OF COCAINE.
AND THOSE TWO FACTORS COMPLETELY EXPLAIN THE DISPARATE IMPACT HERE.
THERE IS NO EVIDENCE THAT ANY DISPARATE IMPACT AROSE

OUT OF THE USE OF THE SUBJECTIVE CRITERIA, THERE IS NO TESTIMONY ON THAT WHATSOEVER. THERE IS ALSO NO TESTIMONY THAT ANY DISPARATE IMPACT WAS EVIDENCED IN THE ARREST - THE RATIOS FOR THE ARREST. IN FACT THE PLAINTIFFS' OWN EXPERT, DOCTOR SHAPIRO, AGREED TO THIS ON PAGE 240 OF HIS TESTIMONY, THAT THE ARRESTS WERE - WAS NOT ANY EVIDENCE OF DISPARATE IMPACT

[TRANSCRIPT OF HEARING 43]

THERE.

SO WE'RE JUST DEALING WITH THE DECISION TO LOOK AT MUSC AND THE DECISION TO IMPLEMENT THIS AT MUSC AND THE DECISION TO JUST LOOK AT THE - TO FOCUS ON COCAINE. AND I THINK THERE ARE TWO PROBLEMS WITH THIS. FIRST OF ALL THESE ARE NOT PRACTICES THAT ARE BARRED BY TITLE 6. DISCRIMINATORY PRACTICES ARE WHAT ARE BARRED BY TITLE 6. THIS IS AN ISSUE OF POPULATION THAT WE'RE DEALING WITH, NOT PRACTICES.

THE STATE, THE POLICE DEPARTMENT, THE HOSPITAL, HAS A RIGHT TO ADDRESS PROBLEMS LIKE THIS, ONE ISSUE AT A TIME. THEY CAN LOOK AT COCAINE, THEY CAN DO IT JUST AT MUSC. SO THIS IS JUST A - IT'S NOT A PRACTICE. IT'S THAT SIMPLE. IT

IS AN ISSUE OF THE POPULATION THAT IS BEING DEALT WITH.

SECONDLY, THESE DECISIONS ARE ENTIRELY JUSTIFIED.

THE COCAINE USE. AGAIN PLAINTIFFS' OWN EXPERT DOCTOR CHASNOFF SAID THAT AT THE TIME THE POLICY WAS IMPLEMENTED HE AGREED THAT SOMETHING HAD TO BE DONE IMMEDIATELY ABOUT THE USE OF COCAINE BY PREGNANT WOMEN. AND THERE IS PLENTY OF EVIDENCE TO SUPPORT THAT, PLENTY OF MEDICAL ARTICLES TO SHOW THAT THAT DECISION TO FOCUS ON COCAINE WAS A MEDICALLY LEGITIMATE DECISION.

THE ISSUE ABOUT MUSC, THERE IS NO EVIDENCE THAT ANYONE LIMITED WHAT OTHER HOSPITALS DID. IN FACT THE EVIDENCE, I THINK CAPTAIN ROBERTS DISCUSSED IT, WAS THAT THERE WAS SOME ENCOURAGEMENT THAT OTHER HOSPITALS LOOK INTO ADOPTING

[TRANSCRIPT OF HEARING 44]

SIMILAR POLICIES. YOU KNOW THEY -

THE COURT: DO YOU AGREE THAT TITLE 6 APPLIES TO THE CITY?

MR. WILSON: NO, WE'RE GOING TO HAVE TO LOOK AT THAT, BUT I THINK IF THERE ARE JUST FUNDS GOING TO OTHER PRACTICES, AND THEY DON'T HAVE ANYTHING TO DO WITH THIS

POLICY, I DON'T SEE HOW IT CAN JUMP OVER TO WHAT THE CITY OR THE POLICE DEPARTMENT HAS DONE WITH REGARD TO THIS POLICY. WE'LL BE GLAD TO BRIEF THAT AND LOOK AT THAT.

THE COURT: WELL IT'S A PRETTY IMPORTANT POINT.

MR. WILSON: EXCUSE ME?

THE COURT: IT'S A PRETTY IMPORTANT POINT AS FAR AS TITLE 6 IS CONCERNED.

MR. WILSON: YES, SIR, IT IS.

THE COURT: BECAUSE IF THE MEDICAL UNIVERSITY IS THE ONLY ONE COVERED BY TITLE 6 THEN IT CERTAINLY DOESN'T HAVE ANY CONTROL OVER ROPER. I MEAN, ALL YOU GOT TO DO IS PICK UP THE PAPER AND YOU CAN TELL THAT. AND SO - AND IT DOESN'T HAVE ANY CONTROL OVER OTHER HOSPITALS. AND SO IT'S A PRETTY TELLING POINT I THINK AS FAR AS TITLE 6 IS CONCERNED.

MR. WILSON: BUT EVEN -

THE COURT: IN OTHER WORDS, YOU'RE SAYING THAT THE CASE COUNSEL FOR THE PLAINTIFFS' RELIES ON TO SAY THAT IT APPLIES TO THE - SOME OTHER DEFENDANTS OTHER THAN MUSC, YOU'RE NOT FAMILIAR WITH THAT CASE?

[TRANSCRIPT OF HEARING 45]

MR. WILSON: THE GROVE CITY? I AM FAMILIAR.

THE COURT: NO. SHE SAYS THAT THAT IS NOT LAW ANYMORE, AND REFERS TO ANOTHER CASE THAT EXAMINES THAT THE MEANING OF THE - OF THE AMENDMENT TO TITLE 6.

MR. WILSON: I'M NOT FAMILIAR WITH THAT OTHER CASE.

THE COURT: YOU NEED TO GET THAT TO ALL OF US AND LET US SEE IT AND LOOK AT IT.

OKAY.

MR. WILSON: THE POINT, EVEN IF TITLE 6 DOES APPLY TO THE POLICE AND TO THE CITY, I STILL DON'T SEE THAT THEY EXERCISED ANY CONTROL TO STOP OTHER HOSPITALS FROM DOING THAT. SO I - THE END RESULT BEING THAT THE FOCUS ON MUSC AND COCAINE, THOSE - THOSE WERE NOT PRACTICES SUBJECT TO A DISCRIMINATORY IMPACT ANALYSIS UNDER TITLE 7.

AND THE LAST THING I JUST WANT TO SAY ABOUT THE CRITERIA AND THIS WHOLE ISSUE OF SUBJECTIVE CRITERIA, THE PLAINTIFFS SEEM TO BE SUGGESTING THAT YOU - ANY POLICY YOU CANNOT APPLY A CRITERIA IF IT HAS A CHANCE OF HAVING A DISCRIMINATORY IMPACT. IF IT HAS A CHANCE OF IMPACTING BLACKS OR POOR PEOPLE MORE OFTEN. AND I WOULD SUGGEST THAT THAT IS JUST NOT WHAT TITLE 6 IS ALL ABOUT.

YOU CAN HAVE A CRITERIA WHETHER THE PROGRAM IS FOR

WHAT WE HAVE HERE OR ANY OTHER POLICY. THE FACT THAT THOSE CRITERIA HAVE THE - HAVE A SIMILAR IMPACT OR HAVE A DISCRIMINATORY IMPACT STANDING ALONE JUST DOESN'T PROVE A

[TRANSCRIPT OF HEARING 46]

TITLE 6 VIOLATION. YOU HAVE TO LOOK AT THE JUSTIFICATION THAT IS OFFERED AND ITS RELATIONSHIP TO ALLOW LEGITIMATE STATE INTEREST. AND THERE IS JUST NO DOUBT THE TESTING, THAT TRYING TO DEAL WITH THIS EPIDEMIC OF COCAINE USE AMONG PRENATAL WOMEN WAS A VERY, VERY HIGH STATE INTEREST AND THAT THIS POLICY ADDRESSED THAT INTEREST.

AND, AGAIN, DOCTOR CHASNOFF AGREED THAT AT THAT TIME IN 1989,1990, WHEN THIS POLICY WAS IMPLEMENTED, THAT THERE WAS AN EPIDEMIC THAT HAD TO BE ADDRESSED IMMEDIATELY.

THE COURT: OKAY.

MR. WILSON: THANK YOU. YES, MA'AM.

MS. SMITH: YOUR HONOR, I FOUND THE CASE THAT I WAS REFERRING TO, ON TITLE 6 PREVIOUSLY, IT'S A CASE CALLED AYERS V. ALLAIN, AND IT'S FROM THE 5TH CIRCUIT, FEBRUARY 6, 1990, 893 F.2D SECOND 732.

THE COURT: IS THAT THE ONLY CASE THAT DEALS WITH THAT POINT?

MS. SMITH: I ACTUALLY HAVE A FOOTNOTE HERE FROM AN ARTICLE THAT CITES A NUMBER OF OTHER CASES.

THE COURT: IF IT'S IN THE BODY.

MS. SMITH: NO, ACTUALLY IT'S IN SOMETHING ELSE. LET ME GIVE YOU A CITE OF ONE OTHER CASE. RADCLIFF VERSUS LANDAU, 883 F.2D, 1481, AT 1483, 9TH CIRCUIT 1989 CONGRESS AMENDED TITLE 6 TO SPECIFY WHAT PROGRAM OR ACTIVITY MEANS, AND I QUOTE, ALL OF THE OPERATIONS OF A DEPARTMENT, AGENCY,

[TRANSCRIPT OF HEARING 47]

SPECIAL PURPOSE DISTRICT OR OTHER INSTRUMENTALITY OF A STATE OR OF A LOCAL GOVERNMENT OR THE ENTIRE PLANT OR COMPARABLE GEOGRAPHIC -

THE COURT: I CAN READ THE CASE.

MS. SMITH: OKAY. THAT'S FROM THE STATUTE ALSO.

THE COURT: BUT THE CASE IS QUOTED IN THE STATUTE?

MS. SMITH: IT QUOTES -

THE COURT: YOU'RE READING FROM THE CASE, ARE YOU NOT?

MS. SMITH: I WAS READING FROM THE STATUTE RIGHT THEN.

THE COURT: OKAY.

THE COURT: I CAN READ. THAT'S ALL RIGHT.
MS. SMITH: YOU CAN DO THAT.
THE COURT: ANYTHING ELSE?
MS. SMITH: JUST BRIEFLY, ON THE DATE OF THE POLICY. THERE WAS A MEETING THAT TOOK PLACE IN SEPTEMBER AT WHICH AN AGREEMENT WAS MADE.
THE COURT: WHO WAS AT THE MEETING AND WHAT IS THE AGREEMENT?
MS. SMITH: THE PEOPLE AT THE MEETING WERE MUSC, SOLICITOR OFFICE OFFICIALS AND PEOPLE FROM THE POLICE DEPARTMENT. THERE WAS THEN A POLICE DEPARTMENT MEMO THAT WAS AVAILABLE - I BELIEVE IT WAS OCTOBER 12, MEMORIALIZING BASICALLY WHAT WAS DECIDED AT THE MEETING. THERE WAS AN

[TRANSCRIPT OF HEARING 48]

AGREEMENT BY WITNESSES, INCLUDING SHIRLEY BROWN AND DOCTOR NEUMAN, THAT THE POLICY STARTED ON 10/1/89.
AND I THINK WHAT STARTED AT THE TIME WAS WE ARE GOING TO REPORT PEOPLE. AND BOTH LORI GRIFFIN, LAVERN SINGLETON AND ELLEN KNIGHT, SANDRA POWELL, THEY WERE ALL ARRESTED AFTER THAT DECISION HAD BEEN MADE AFTER THE FOLK HAD MET TOGETHER AND DECIDED TO DO IT.

WHAT HAPPENED IN JANUARY IS COMPLETELY IRRELEVANT. THAT WAS CHANGING THE POLICY TO ADD WHAT THEY CALL THE AMNESTY PROVISION. AND THAT I THINK IS IRRELEVANT TO WHAT WE'RE TALKING ABOUT.

THE COURT: SO THE DATE WAS OCTOBER 1ST.

MS. SMITH: THAT'S RIGHT, YOUR HONOR.

THE COURT: OKAY. OKAY. THANK YOU.

MS. DUNN: YOUR HONOR, I DID WANT TO CLARIFY THE ASSERTION THAT I REFERRED TO BY DEFENSE ATTORNEY THAT THE POLICY WAS GOING TO BE REINSTATED. THAT WAS NOT IN THE TRIAL BUT IN MOTIONS PRIOR TO THE TRIAL, AND I'LL BE HAPPY, I HAVE GOT THE TRANSCRIPT AND HAVE THE STATEMENT SPECIFICALLY, BUT IT WAS IN THAT CONTEXT, YOUR HONOR.

THE COURT: OKAY. LET'S TAKE ABOUT TEN MINUTES AND THEN -

MS. SHOWERS: CAN I RESPOND TO THE DATE OF THE POLICY?

THE COURT: SURE.

[TRANSCRIPT OF HEARING 49]

MS. SHOWERS: THERE WAS A MEETING AND I THINK THE TESTIMONY WAS SOMETIME AROUND HUGO, WHICH WAS LATE SEPTEMBER.

AND THAT WAS WHEN AFTER JOE GOOD TALKED TO THE SOLICITOR THEY BROUGHT THEM IN AND SAID YOU HAVE TO REPORT. THERE WAS NO POLICY. IT WAS JUST NOTICE TO THE PHYSICIANS THAT THIS WAS COMPLYING WITH THE LAW, ANYMORE THAN, YOU KNOW, IF JOE GOOD CALLED UP AND SAID, MR. CONDON, DO WE HAVE TO REPORT GUNSHOT WOUNDS. IT'S NOT A - IT'S NOT A CONSPIRACY WITH THE POLICE DEPARTMENT OR THE SOLICITOR'S OFFICE, IT'S TELLING THEM THAT THIS IS THE LAW, YOU HAVE TO COMPLY WITH IT.

SO NEUMAN, WHEN HE SAYS WE STARTED OCTOBER 1ST, THERE IS NO EVIDENCE THAT THERE WAS A POLICY. I'LL AGREE THAT THE FIRST EVIDENCE THAT THERE WAS ANY SORT OF AGREEMENT WAS THE OPERATIONAL GUIDELINES OF THE POLICE, WHICH IS DATED 10/12 OF '89 OR '88. '89. SO IT DIDN'T START AS FOR MS. GRIFFIN AND MS. POWELL.

THE COURT: WELL, WHAT IS THE DIFFERENCE FROM THE STANDPOINT OF THE FOURTH AMENDMENT IF - IF YOU TAKE SOMEBODY'S URINE SAMPLE, WHO IS A PATIENT IN YOUR HOSPITAL, AND IF IT TESTS POSITIVE, YOU'RE GOING TO TURN IT OVER TO THE SOLICITOR FOR PROSECUTION OF CHILD ABUSE. AND IF IT TESTS POSITIVE, YOU'RE GOING TO TURN IT OVER FOR PROSECUTION FOR A

DRUG ABUSE. WHAT IS THE DIFFERENCE?
MS. SHOWERS: IT'S THE PURPOSE OF THE DRUG TEST.
THEY DIDN'T GET TOGETHER AND SAY WE'RE GOING TO TEST THESE

[TRANSCRIPT OF HEARING 50]

PEOPLE FOR THE PURPOSE OF PROSECUTION, THEY WERE TESTING THEM
ALL ALONG FOR MEDICAL PURPOSES TO TREAT THE WOMEN AND HER
UNBORN CHILD. AND IT WAS BECAUSE THEY FOUND OUT THAT THAT WAS
ALSO -
THE COURT: I MEAN, I UNDERSTAND THAT ALL OF THE
WOMEN THAT WERE TESTED WERE ALLEGEDLY TESTED BECAUSE THEY WERE
BEING - THEIR PREGNANCIES WERE BEING TREATED AT THE HOSPITAL,
RIGHT?
MS. SHOWERS: RIGHT.
THE COURT: BUT, WELL THAT - IF THAT TEST IS DONE
FOR MEDICAL PURPOSES ALONE, AND - ANYTIME YOU GO INTO A
HOSPITAL YOU HAVE YOUR BLOOD DRAWN, AND YOU GIVE A URINE
SAMPLE MOST OF THE TIME, AND THAT'S USED FOR MEDICAL PURPOSES,
AND THAT DOES NOT IMPLICATE THE FOURTH AMENDMENT AGAINST
ILLEGAL SEARCHES AND SEIZURES. IT ONLY BECOMES IMPLICATED
WHEN YOU AGREE TO TAKE THAT SAMPLE, IF IT IS INCRIMINATING,
AND TURN IT OVER TO LAW ENFORCEMENT. THEN IT BECOMES A -

AGAIN BECOMES AN ILLEGAL SEARCH. SO IF -

MS. SHOWERS: THAT'S WHAT I'M SAYING.

THE COURT: SO IF THE ILLEGALITY IS BASED ON CHILD ABUSE OR ILLEGALITY IS BASED ON USING DRUGS, WHAT DIFFERENCE DOES IT MAKE? THAT - ALL OF THE PROSECUTIONS WERE FOR CHILD ABUSE WERE THEY NOT?

MS. SMITH: OR DRUG DELIVERY TO A MINOR AND SOME POSSESSION.

[TRANSCRIPT OF HEARING 51]

MS. SHOWERS: SOME POSSESSION AND DELIVERY.

THE COURT: YOU SAY THERE WASN'T A POLICY. THERE WAS A POLICY. THERE WAS A POLICY TO TAKE THESE SAMPLES AND IF THEY WERE POSITIVE TO TURN THEM OVER TO THE SOLICITOR BECAUSE OF CHILD ABUSE.

MS. SHOWERS: IT'S NOT -

THE COURT: AND THAT STARTED OCTOBER THE 1ST.

MS. SHOWERS: NO, SIR. THAT WAS ALWAYS THE LAW THAT THEY HAD TO TURN OVER, ANYTIME A CHILD COMES INTO THE MEDICAL UNIVERSITY AND THERE IS EVIDENCE OF ABUSE, THEY ARE REQUIRED UNDER LAW TO REPORT IT. THE DOCTORS WERE UNAWARE THAT SOUTH CAROLINA LAW REQUIRED THAT THEY REPORT EVIDENCE OF DRUG ABUSE

AND A PREGNANT WOMEN AS A CHILD ABUSE. THAT'S WHEN THEY ACQUIRED THAT KNOWLEDGE IN OCTOBER. THEY WEREN'T DOING THIS TO PROSECUTE WOMEN, THEY WERE DOING IT TO TREAT.

THE COURT: I UNDERSTAND THAT, BUT THAT DOESN'T REALLY ADDRESS - THEY FOUND OUT ABOUT THAT IN OCTOBER AND THEY STARTED TURNING OVER IT TO THE SOLICITOR, AND THEN THAT DEVELOPED INTO THE POLICY THAT YOU CALL -

MS. SHOWERS: RIGHT. BUT IT WASN'T GOVERNMENT ACTION WHEN THE MEDICAL DOCTOR OR THE URINE SPECIMEN, HE DID IT TO TREAT THE WOMEN. HE DIDN'T DO THE DRUG TEST TO -

THE COURT: WHAT CHANGED?

MS. SHOWERS: WELL, ALTHOUGH WE DISAGREE WITH THE RATIONAL OF THE COURT, WHEN THE POLICE, AND THERE WAS THIS

[TRANSCRIPT OF HEARING 52]

MEETING THAT EVERYONE WOULD COORDINATE THEIR EFFORTS AND MEET TOGETHER TO TURN OVER THIS INFORMATION AND GET THIS WOMEN TREATMENT, THAT WAS MY UNDERSTANDING THAT THE COURT FOUND THAT THAT SORT OF CONSPIRACY WAS GOVERNMENT ACTION. THAT'S WHAT TURNED THE MEDICAL TESTS INTO GOVERNMENT ACTION BY THESE

PRIVATE MEDICAL DOCTORS ACTING FOR MEDICAL PURPOSES. IF THERE IS NO AGREEMENT TO SHARE THIS INFORMATION AT THE TIME THAT THE TEST IS DONE, THEN THERE IS NO GOVERNMENT ACTION.

THE COURT: WELL WHEN DID THEY START AGREEING TO SHARE IT WITH THE SOLICITORS? OCTOBER THE 1ST?

MS. SHOWERS: NO, OCTOBER 12TH IS THE FIRST GUIDELINE, ACCORDING TO -

THE COURT: I DIDN'T ASK YOU ABOUT THE GUIDELINE. I SAID WHEN DID THEY FIRST AGREE TO SHARE THESE POSITIVE TESTS WITH THE SOLICITOR'S OFFICE OR THE POLICE DEPARTMENT?

MS. SHOWERS: AFTER THE OPERATIONAL GUIDELINES.

THE COURT: GIVE ME A DATE?

MS. SHOWERS: OCTOBER 12, 1989.

THE COURT: WHAT HAPPENED TO GRIFFIN, HERS WAS TAKEN ON OCTOBER 7TH, SHE TESTED POSITIVE.

MS. SHOWERS: YES, SIR.

THE COURT: WHAT HAPPENED TO THAT POSITIVE TEST?

MS. SHOWERS: AFTER THEY LEARNED THAT, THEY HAD THAT TURNED OVER TO THE POLICE.

THE COURT: JUST WHAT HAPPENED?

[TRANSCRIPT OF HEARING 53]

MS. SHOWERS: SHE WAS ARRESTED.
THE COURT: THEY TURNED THAT TEST OVER TO THE POLICE?
MS. SHOWERS: YES, SIR.
THE COURT: AND SHE WAS ARRESTED?
MS. SHOWERS: YES, SIR.
THE COURT: NOW WHY WAS IT TURNED OVER TO THE POLICE WHEN IT WAS TAKEN ON OCTOBER 7, AND YOU SAY THAT NOTHING TOOK PLACE UNTIL OCTOBER THE WHAT?
MS. SHOWERS: I GUESS I'M NOT MAKING MYSELF CLEAR. IT'S JUST THAT THEY TURN IT OVER -
THE COURT: I AM JUST ASKING YOU SOME QUESTIONS. I MEAN, I'M JUST ASKING YOU TO ANSWER THOSE QUESTIONS.
MS. SHOWERS: THEY TURNED IT OVER TO THE POLICE UNDER THE CHILD ABUSE STATUTE.
THE COURT: AND THEY STARTED DOING THAT EFFECTIVE WHAT DATE?
MS. SHOWERS: SOMETIME IN OCTOBER. DOCTOR NEUMAN DID TESTIFY THAT IT WAS OCTOBER 1ST THAT THEY STARTED DOING THAT.
THE COURT: ALL RIGHT. NOW, THE POLICY THAT YOU REFERRED TO, THAT THEN BEGAN OFFERING AN ALTERNATIVE TO THE PEOPLE THAT TESTED POSITIVE, THAT THEY COULD GO INTO DRUG TREATMENT, RIGHT.

MS. SHOWERS: WELL, NO. THE POLICY THAT I'M TALKING

[TRANSCRIPT OF HEARING 54]

ABOUT WAS THE COORDINATED, YOU KNOW, THESE ARE THE CRITERIA. THIS IS WHEN YOU WILL TEST, THE BOARD APPROVED IT AND THAT WAS LATE NOVEMBER OF '89. MS. SMITH WAS REFERRING TO THE LATER AMENDMENT TO THIS EVOLVING POLICY IN JANUARY OF 1990. BUT THE OFFICIAL WRITTEN POLICY WAS IN NOVEMBER OF 1989.

THE COURT: OKAY. ANYTHING ELSE? LET'S TAKE ABOUT TEN MINUTES.

(WHEREUPON, A BREAK WAS TAKEN OFF THE RECORD.)

THE COURT: KEEP YOUR SEATS. OKAY. LET ME PREFACE MY REMARKS BY SAYING SOMETHING THAT IS TOTALLY IRRELEVANT TO EVERYBODY BUT ME. THIS IS WITHOUT ANY QUESTION THE TOUGHEST CASE I HAVE EVER HAD. IT PRESENTS MORE NOVEL ISSUES, IT PRESENTS THEM IN A UNIQUE FASHION THAT MAKES IT VERY, VERY DIFFICULT TO DETERMINE WHAT THE APPLICABLE LAW REALLY IS AND WHAT LEGAL RULINGS ARE CORRECT. I SAID TO MY STAFF MONTHS AND MONTHS AGO WHILE WE WERE TRYING THIS CASE, THAT THERE WASN'T MUCH DOUBT IN MY MIND THAT I WAS GOING TO BE REVERSED IN THIS

CASE. AND THEY SAID, WELL, IF YOU ARE GOING TO BE REVERSED AND YOU KNOW IT, WHY DON'T YOU DO SOMETHING DIFFERENT. AND I SAID BECAUSE I DON'T KNOW WHY I'M GOING TO BE REVERSED, I JUST KNOW THAT IT IS ALMOST IMPOSSIBLE FOR ANYBODY TO TRY A CASE THAT HAS GOT THIS MANY ISSUES IN IT AND GET THEM ALL RIGHT.

AND SO I THINK WE'LL HAVE TO SEE WHAT THE FOURTH CIRCUIT SAYS, AND I HOPE WE DON'T HAVE TO TRY THE CASE AGAIN, BUT I HAVE ALREADY PREDICTED THAT I'M GOING TO GET REVERSED.

[TRANSCRIPT OF HEARING 55]

AND I WISH I KNEW WHERE I AM GOING TO GET REVERSED SO THAT I COULD CORRECT IT.

I SUBMITTED TO THE JURY TWO ISSUES. ONE WAS THE ISSUE OF A FOURTH AMENDMENT VIOLATION BECAUSE OF THE ALLEGED ILLEGAL SEARCHES OF THESE PLAINTIFFS. AND AS I SAID EARLIER, I SAID THAT THESE SEARCHES WERE NOT CONSTITUTIONAL UNLESS THE PLAINTIFFS CONSENTED TO IT. THE JURY FOUND THAT THEY DID CONSENT TO THEM AND FOUND THE VERDICT FOR THE DEFENDANT ON THOSE CLAIMS.

I ALSO SUBMITTED THE CLAIM ASSERTED BY THE PLAINTIFF FOR A VIOLATION OF THEIR EQUAL PROTECTION RIGHTS UNDER THE

FOURTEENTH AMENDMENT. THE JURY ALSO RETURNED A VERDICT FOR
THE DEFENDANT ON - FOR THE DEFENDANTS ON THOSE CLAIMS.
THEREBY CONCLUDING THAT THE DEFENDANTS' EQUAL PROTECTION
RIGHTS WERE NOT VIOLATED, TO WIT: THAT THEY WERE NOT
DISCRIMINATED AGAINST BECAUSE OF THEIR RACE BY THE
DEFENDANTS.
THE PLAINTIFFS' HAVE MADE A MOTION FOR JUDGMENT NOV
AS TO THOSE CLAIMS. AS SOMEONE HAS POINTED OUT EARLIER, THE
LAW REQUIRES THAT IN CONSIDERING THAT MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT, THAT I MUST GIVE THE DEFENDANTS
THE BENEFIT OF ALL INFERENCES REASONABLY DRAWN FROM THE
EVIDENCE AND VIEW THAT EVIDENCE IN THE LIGHT MOST FAVORABLE TO
THE NON-MOVING PARTY. AND IT IS ONLY WHEN I CONCLUDE THAT
HAVING DONE THAT, THAT A VERDICT CANNOT BE SUSTAINED FOR THE

[TRANSCRIPT OF HEARING 56]

DEFENDANTS, THAT I GRANT THE MOTION.
I HAVE DONE THAT IN THIS CASE AND I THINK THAT WHEN
I DO, I AM COMPELLED TO DENY THE PLAINTIFFS' MOTION FOR
JUDGMENT NOV. THERE IS EVIDENCE IN THE RECORD FROM WHICH THE
JURY COULD REASONABLY CONCLUDE THAT THE PLAINTIFF CONSENTED TO

THESE SEARCHES AND THAT THEY THEREFORE WERE NOT IN VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION. LIKEWISE I THINK THAT THERE IS EVIDENCE IN THE RECORD TO SUPPORT THE JURY'S VERDICT THAT THE PLAINTIFFS WERE NOT DISCRIMINATED AGAINST BECAUSE OF THEIR RACE IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT SO AS TO ENTITLE THEM TO RECOVER ON THAT CAUSE OF ACTION AS WELL. SO AS TO THE JUDGMENT NOV, THE SAME IS HEREBY DENIED.

WE NEXT TURN TO THE QUESTION OF INJUNCTIVE RELIEF AS TO THE CAUSES OF ACTION OTHER THAN THE TITLE 6 ACTION, BECAUSE AS I TOLD YOU EARLIER I PLAN TO RULE ON THAT CAUSE OF ACTION BY WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

LET'S DISCUSS THE CLAIM BY THE PLAINTIFFS' THAT THEY'RE ENTITLED TO INJUNCTIVE RELIEF ON THEIR - BECAUSE OF THE DEFENDANTS' INTERFERENCE WITH THEIR RIGHT TO PROCREATE.

I TRY TO BE STRAIGHTFORWARD AND NOT PLAY ANY GAMES WITH ANYBODY. WHEN I WAS A LAWYER I DIDN'T PARTICULARLY LIKE PEOPLE PLAYING GAMES WITH ME AND I DON'T LIKE TO PLAY THEM WITH OTHER PEOPLE. AND THEREFORE I MADE NO SECRET OF THE FACT

25 THAT I REALLY COULD NEVER SEE THE BASIS OF THE RIGHT,

[TRANSCRIPT OF HEARING 57]

1 INTERFERENCE OF THE RIGHT TO PROCREATE. I STILL DON'T SEE
2 IT. I - I JUST DON'T SEE WHERE THE FACTS IN THIS CASE
3 SUPPORT THE CONTENTION THAT THE CONDUCT OF THE DEFENDANTS'
4 IMPOSING THIS POLICY ON THE PLAINTIFFS SOMEHOW INTERFERED WITH
5 THE PLAINTIFFS' RIGHT, PLAINTIFFS' RIGHTS TO CARRY THEIR
6 PREGNANCIES TO TERM. I JUST - I DON'T SEE THAT IN THE FACTS
7 OF THE CASE.
8 THEREFORE I GUESS WHAT I'M SAYING IS I DON'T THINK
9 THAT THERE IS A SHOWING THAT THERE IS A VIOLATION OF THE
10 PLAINTIFFS' CONSTITUTIONAL RIGHTS IN THAT REGARD. AND I THINK
11 THAT'S THE FIRST STEP IN CONSIDERING INJUNCTIVE RELIEF. IF I
12 DID FIND THAT THERE WAS A CONSTITUTIONAL VIOLATION, THEN I
13 THINK THAT I WOULD HAVE TO LOOK AND SEE IF THE DEFENDANT COULD
14 MORE NARROWLY TAILOR WHAT THEY WERE DOING TO AVOID IT. AND
15 THEN I WOULD HAVE TO GO INTO THE POSSIBILITY AS TO WHETHER OR
16 NOT ANY SUCH CONSTITUTIONAL VIOLATION WOULD LIKELY BE REPEATED
17 IN THE FUTURE AND THEREFORE IT SHOULD BE ENJOINED.

BUT I THINK AS FAR AS THE RIGHT TO PROCREATE, THERE IS NO EVIDENCE OF ANY CONSTITUTIONAL VIOLATION. AS FAR AS THE CONFIDENTIALITY IN THE MEDICAL RECORDS, THAT'S A LITTLE BIT DIFFERENT. I PROBABLY DID SAY DURING THE TRIAL THAT MS. HILDEBRAND WAS GUILTY OF DOING THAT. IT WAS A SUPERFLUOUS RULING BECAUSE IT WASN'T SOMETHING THAT I WAS CALLED UPON TO DO. AND I DON'T KNOW THAT THAT IS A RULING THAT HAS A BINDING EFFECT OF LAW UNDER THOSE CIRCUMSTANCES. BUT THAT REALLY IS

[TRANSCRIPT OF HEARING 58]

NOT THE IMPORTANT ISSUE. I THINK THAT SHE DID DISSEMINATE TO OTHERS OUTSIDE OF THE MEDICAL UNIVERSITY, OUTSIDE OF THE GROUP OF PEOPLE THAT NEEDED TO HAVE THAT INFORMATION TO PERFORM THE MUSC TASK OF TREATING THE PLAINTIFF PATIENT, AND THAT SUCH INFORMATION WAS OF THE TYPE THAT IS PROTECTED BY THE CONSTITUTION.

WE DID NOT PERMIT THAT ISSUE TO GO TO THE JURY BECAUSE MS. HILDEBRAND WAS NOT A PARTY TO THE ACTION. AND OF COURSE AS WE ALL KNOW, THE DOCTRINE OF RESPONDEAT SUPERIOR DOES NOT APPLY IN CASES FOR DAMAGES UNDER SECTION 1983. AND

SHE NOT BEING A POLICYMAKER, MEANT THAT THE MEDICAL UNIVERSITY COULD NOT BE HELD LIABLE FOR ANY VIOLATION OF THE PLAINTIFFS' CONSTITUTIONAL RIGHTS BY RELIEVING CONFIDENTIAL INFORMATION. BUT THE SAME ON DAMAGE RECOVERY, THEY ARE NOT APPLICABLE IN THE CASE OF INJUNCTIVE RELIEF. HAVING CONCLUDED THAT THERE IS EVIDENCE THAT THE RELEASE OF THIS INFORMATION VIOLATES THE PLAINTIFFS' CONSTITUTIONAL RIGHTS, AND THAT THE POLICY COULD HAVE BEEN MORE NARROWLY TAILORED AND AVOIDED THAT, I THEN LOOK TO THE QUESTION OF WHETHER OR NOT THE EQUITABLE REMEDY OF INJUNCTIVE RELIEF IS AVAILABLE.

AND I'M LOOKING HERE AT A CASE THAT HAS SOME VERY GOOD LANGUAGE IN IT. IT'S A CASE OF SIMMONS AGAINST POE. IT'S A FOURTH CIRCUIT CASE, DECIDED ON MARCH THE 1ST,1995. QUOTING FROM PAGE - THESE COMPUTER PRINTOUTS IT'S HARD TO TELL WHAT PAGE YOU'RE ON. LOOKS LIKE 1382. IT'S PAGE 12 OF

[TRANSCRIPT OF HEARING 59]

THE LEXUS PRINTOUT. THE COURT SAID THE FOLLOWING: THE EQUITABLE REMEDY IS UNAVAILABLE ABSENT A SHOWING OF IRREPARABLE INJURY. A REQUIREMENT THAT CANNOT BE MET WHERE

THERE IS NO SHOWING OF ANY REAL OR IMMEDIATE THREAT THAT THE PLAINTIFF WILL BE WRONGED AGAIN. A LIKELIHOOD OF SUBSTANTIAL AND IMMEDIATE IRREPARABLE INJURY. THE SPECULATED NATURE OF LINUS'S CLAIM OF FUTURE INJURY REQUIRES A FINDING THAT THIS PREREQUISITE OF EQUITABLE RELIEF HAS NOT BEEN FULFILLED. I THINK THAT STANDARD CAUSES THE COURT TO DENY THE PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF AS IT RELATES TO THE CLAIM FOR THE RELEASE OF THE CONFIDENTIAL MEDICAL INFORMATION BY MS. HILDEBRAND.

THE NEXT AREA OF INJUNCTIVE RELIEF THAT IS ADVANCED BY THE PLAINTIFFS HAS TO DO WITH THE FOURTH AMENDMENT ILLEGAL SEARCH. THE OUTCOME OF THAT ASPECT OF THE CASE IS DEPENDENT, IN MY JUDGMENT, ON THE OUTCOME OF THE APPEAL OF THE VERDICT IN THAT CASE. THE JURY HAS FOUND, AND I HAVE HELD THAT THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO SUPPORT THAT THE PLAINTIFFS CONSENTED TO THOSE SEARCHES AND THAT THEY THEREFORE WERE NOT ILLEGAL.

THAT BEING THE CASE, THERE IS NO CONSTITUTIONAL VIOLATION AND AN INJUNCTION WOULD NOT BE APPROPRIATE. IT MAY BE THAT IF THE FOURTH CIRCUIT CONCLUDES THAT THERE IS A

CONSTITUTIONAL VIOLATION THERE BECAUSE THERE WAS NOT CONSENT IN ONE OR MORE OF THE PLAINTIFFS' INSTANCES, THEN OBVIOUSLY

[TRANSCRIPT OF HEARING 60]

THE CASE WOULD COME BACK TO ME FOR DAMAGE HEARINGS AS FAR AS THOSE PLAINTIFFS ARE CONCERNED. AND AT THAT PARTICULAR TIME WE WOULD THEN REVISIT THE MATTER OF INJUNCTIVE RELIEF. BUT AT THE PRESENT TIME, I THINK UNDER THE FACTS IN THIS CASE, THAT THAT INJUNCTIVE RELIEF SHOULD BE DENIED, FIRST OF ALL BECAUSE THERE IS NO INDICATION THAT THERE WAS A CONSTITUTIONAL VIOLATION IN REGARD TO ANY PLAINTIFFS UNDER THE FOURTH AMENDMENT.

AND BECAUSE OF THAT RATIONAL, I REALLY DON'T THINK IT'S APPROPRIATE FOR THE COURT TO GO INTO THE MATTER OF WHETHER THE POLICY IS GOING TO BE OPENED BACK UP OR NOT. I REALLY DON'T PERCEIVE THE LIKELIHOOD OF ANY FURTHER DAMAGE BEING SUSTAINED - IF WE CAN CALL IT DAMAGE, BEING SUSTAINED BY THE PLAINTIFFS' BECAUSE OF THE POLICY AND ITS FOURTH AMENDMENT IMPLICATIONS.

BUT I DON'T THINK IT NECESSARY FOR ME TO REACH THAT POINT IN VIEW OF MY DECISION TO RELY ON THE JURY VERDICT AND

MY DENIAL OF THE MOTION FOR JUDGMENT NOV IN CONCLUDING THAT THERE IS NOT SUFFICIENT SHOWING OF THE CONSTITUTIONAL VIOLATIONTO WARRANT INJUNCTIVE RELIEF FOR THE FOURTH AMENDMENT CONDUCT.

FOR THE REASONS STATED THEREFORE, THE MOTIONS OF THE PLAINTIFFS' FOR INJUNCTIVE RELIEFS ARE AT THIS TIME DENIED.

NOW, TITLE 6. FINDINGS OF FACT AND CONCLUSIONS OF LAW. WHEN DO YOU WANT TO DO THOSE? HOW LONG DOES IT TAKE?

[TRANSCRIPT OF HEARING 61]

YOU KNOW IF IT'S GOING TO TAKE 30 DAYS OR SO I REALLY DON'T NEED THEM.

NOW, I MIGHT SAY ON TITLE 6 THAT OUR RECOLLECTION IS THAT THE PLAINTIFFS AGREED THAT MUSC WAS THE ONLY VIABLE DEFENDANT AS FAR AS TITLE 6 IS CONCERNED. NOW, IF WE FIND THAT IN THE RECORD, WE WILL FIND IT IN THE RECORD. BUT THAT'S OUR RECOLLECTION OF THE FACT. WE HAD TOTALLY NOT CONSIDERED ANYBODY BUT MUSC. WE DID NOT THINK THAT THE PLAINTIFFS' ASSERTED THAT ANYBODY BUT MUSC WAS A TARGET DEFENDANT IN THAT CLAIM. AND THE FIRST WE HEARD OF THAT IS THIS MORNING.

NOW, I DON'T KNOW WHERE IT CAME IN THE RECORD. AND I SAID WE'LL FIND IT. WE'LL FIND IT IF YOU SHOW IT TO ME, BECAUSE I DON'T THINK I'M GOING TO SIT DOWN AND GO THROUGH IT. I DON'T KNOW THAT IF THERE IS SUCH A CONSENT IN THE RECORD, THAT THAT IS THE END OF THE MATTER. I NORMALLY PREFER TO DISPOSE OF SOMETHING ON THE MERITS RATHER THAN IF SOMEBODY SAYS SOMETHING AND THEN TAKE IT AWAY LATER, AND THERE IS NO PREJUDICE TO THE OTHER PARTY, I THINK WE OUGHT TO LOOK AT IT. AND I DON'T SEE WHERE THERE IS ANY PREJUDICE TO THE

DEFENDANTS, EVEN IF YOU DID CONSENT TO THAT, BUT THERE MAY BE. AND SO I THINK THAT AT LEAST THAT ITEM NEEDS TO BE BRIEFED ON TITLE 6.

AND I WOULD BE HAPPY TO HAVE YOUR FINDINGS OF FACT AND CONCLUSIONS OF LAW IF IT'S NOT GOING TO TAKE A LONG TIME. BUT - BUT, YOU KNOW, I REALLY, I DON'T WANT TO DENY ANYBODY

[TRANSCRIPT OF HEARING 62]

THE RIGHT TO SAY ANYTHING THEY WANT TO SAY, BUT I WANT TO GET THIS CASE BEHIND ME. I GOT TWO CASES THAT I WANT TO END THIS SUMMER, AND THIS IS ONE OF THEM. AND THE OTHER ONE IS - YOU KNOW WHAT IT IS. AND SO IF I COULD GET THOSE TWO CASES BEHIND

ME, THOSE TWO CASES AND STAND UP AND BREATHE AND BE ALIVE, I FEEL LIKE I'M A LUCKY MAN.

MS. SMITH: YOUR HONOR, I WOULD PROPOSE THAT WE BRIEF JUST THIS ONE ISSUE. WE HAVE DONE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE TITLE 6 ISSUE.

THE COURT: OKAY.

MS. SMITH: WE COULD DO BRIEFINGS ON JUST THIS ONE ISSUE, AND UNLESS THE DEFENDANTS WOULD LIKE TO DO - SUPPLEMENT THEIR FINDINGS OF FACT.

THE COURT: WHAT ABOUT IF I GIVE YOU A WEEK.

MS. SMITH: THAT'S FINE.
MR. HOOD: THAT'S FINE.
THE COURT: BOTH SIDES A WEEK. AND WHEN YOU SEE YOU'VE GOT A PROBLEM, GIVE ME A RING AND I'LL SEE AND WE WILL HAVE A CONFERENCE CALL OR SOMETHING AND TALK ABOUT IT. THANK YOU VERY MUCH. WE'LL BE IN RECESS.
MS. SMITH: I'M SORRY, YOUR HONOR, THERE IS ONE OTHER MOTION PENDING, WHICH IS THE PLAINTIFFS' MOTION TO SUBSTITUTE THE ESTATE OF THERESA JOSEPH FOR HER, AND SO WE WANTED TO GET A RULING ON THAT.
THE COURT: ANY PROBLEM WITH THAT?

[TRANSCRIPT OF HEARING 63]

MR. HOOD: YOUR HONOR, WE HADN'T SEEN THEIR MEMORANDUM OF LAW FOR THEM ON THIS SUBJECT. I DON'T KNOW IF THEY HAVE A RIGHT TO UNDER THE LAW.
THE COURT: IT'S A QUESTION OF WHETHER THE CAUSE OF ACTION SURVIVES OR NOT.
MS. SMITH: YES.
THE COURT: I DON'T HAVE ANY IDEA. I THINK IT WOULD BE EASY TO DETERMINE. AND I DOUBT - I JUST DON'T KNOW. YOU KNOW.
MS. SMITH: SHALL WE DO A LITTLE BRIEF ON THAT FOR THE NEXT WEEK?

THE COURT: I THINK SO. AND IF IT SURVIVES - IF THE CAUSE OF ACTION SURVIVES AND INURES TO THE BENEFIT OF THE ESTATE, OBVIOUSLY THE SUBSTATION IS A MERE FORMALITY.

MS. SMITH: THANK YOU, YOUR HONOR.

MR. HOOD: THANK YOU, YOUR HONOR.

THE COURT: AND I DON'T - I JUST DON'T KNOW. I DON'T KNOW WHETHER IT WOULD BE STATE LAW OR FEDERAL. I JUST DON'T KNOW WHAT YOU WOULD LOOK TO. LET'S DO THAT WITHIN THE WEEK ALSO.

MS. SMITH: OKAY.

CERTIFICATE

I, NORMA JEAN CARROW, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

DATED IN CHARLESTON, SOUTH CAROLINA, THIS 27TH DAY OF AUGUST, 1997.

[TRANSCRIPT OF HEARING 64]

NORMA JEAN CARROW

* * *

Filed September 29, 1997
LARRY W. PROPES, CLERK
FLORENCE, S.C.

Entered September 29, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Civil Action No. 2:93-2624-2

Crystal M. Ferguson, Theresa Joseph, Darlene Nicholson, Paula S. Hale, Ellen L. Knight, Patricia R. Williams, Lori Griffin, Pamela Pear, Sandra Powell, and LaVerne Singleton,

Plaintiffs,

vs.

The City of Charleston, South Carolina, et al.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This action was brought by ten women pursuant to 42 U.S.C. §1983 alleging their rights were violated by the defendants when the women were arrested for drug use while pregnant. The plaintiffs asserted ten claims: (1) violation of the right to privacy; (2) violation of the right to procreate; (3) violation of the Fourth Amendment; (4) violation of the Equal Protection clause based on gender discrimination; (5) violation of the Equal Protection clause based on racial discrimination; (6) violation of Title VI of the Civil Rights Act; (7) violation of the Federal Confidentiality Statute, 42 U.S.C. §290dd-2; (8) abuse of process; (9) violation of the

Due Process clause of the Fourteenth Amendment; and (10) violation of the right to refuse medical treatment.

The action came to trial before the court with a jury from November 20, 1996, to December 19, 1996. The court granted judgment as a matter of law for the defendants on the claims for intentional discrimination on the basis of gender, due process, right to refuse medical treatment, 42 U.S.C. §290dd-2, and abuse of process. The court charged the jury on the plaintiffs' claims for violations of the Equal Protection clause and Fourth Amendment and the jury rendered a verdict in favor of the defendants on both claims. The court then took under advisement the claims for denial of the right to privacy, right to procreate, and Title VI. On August 13, 1997, the court denied the plaintiffs' request for injunctive relief in the right to procreate and right to privacy claims and allowed to parties to submit further briefs on the Title VI claim. The court has now considered the Title VI claim. After weighing the testimony of the witnesses, examining the exhibits introduced, and studying the applicable law, the court, pursuant to Rule 52 of the Federal Rules of Civil Procedure, hereby makes the following findings of fact and conclusions of law:

Findings of Fact

1. The plaintiffs are eight black women, one white woman, and one woman who is multiracial.

2. The defendants are either agencies of the State of South Carolina or agencies of political subdivisions thereof.

3. All of the plaintiffs presented at the Medical University of South Carolina ("MUSC") in Charleston, South Carolina for gynecological services. All of

the plaintiffs either delivered children at MUSC or were treated postpartum at MUSC.

4. All of the plaintiffs except Darlene Nicholson were arrested when the defendants discovered they were using drugs while pregnant. Instead of being arrested, Darlene Nicholson was involuntarily committed to MUSC's Institute of Psychiatry for drug treatment.

5. The catalyst for targeting these individuals was a policy designed to prevent cocaine abuse in pregnant women. During the fall of 1989, the defendants formulated a policy ("policy") for treating pregnant women who tested positive for cocaine at MUSC. The policy was not implemented at any other hospital in Charleston by these defendants nor was it applied to women who were less than twenty-four weeks pregnant.

The policy identified probable drug abuse through screening all maternity patients who met certain criteria. A female patient was tested for cocaine through the use of a urine drug screen ("UDS") if she presented with one or more of the following symptoms: (1) *abruptio placentae*, or separation of the placenta from the uterine wall; (2) intrauterine fetal death; (3) no prenatal care; (4) late prenatal care; (5) incomplete prenatal care; (6) pre-term labor of no obvious cause; (7) history of cocaine use; (8) unexplained congenital anomalies; or (9) intrauterine growth retardation of no obvious cause.

6. If a patient tested positive for cocaine, an employee of MUSC would confront the patient and question her about her drug use. At some point thereafter, the positive results of the UDS were provided to the Ninth Circuit Solicitor's office or to the Charleston City Police Department. An officer of the latter then arrested the patient who had tested positive.

7. The policy was applied in all maternity departments at MUSC. Its goal was not to arrest patients but to facilitate their treatment and protect both the mother and unborn child.

8. Prior to 1990, if a patient tested positive for cocaine, she was arrested without further ado. However, the defendants changed the policy in 1990 to give patients a choice to receive treatment for their drug use or be arrested and prosecuted under South Carolina law.

9. The large majority of MUSC's maternity patients are black. The maternity population at MUSC during the time period relevant to this action was approximately sixty-seven percent (67%) black and thirty-three percent (33%) white.

10. The racial composition of the women who tested positive for cocaine at MUSC during the period in question was approximately ninety percent (90%) black and ten percent (10%) white. Of the thirty women who were arrested under the policy, ninety-six percent (96%) were black and four percent (4%) were white.

The plaintiffs' expert witness Dr. Martin Shapiro testified that the disparity of racial composition between the MUSC maternity population and the persons who tested positive for cocaine was roughly 5.54 standard deviations from chance. Such a deviation means that the likelihood that chance is the cause is less than 1 in 100,000. Dr. Shapiro explained that some reason other than chance must be the cause of the disparity.

The defendants' expert statistician Dr. McCabe testified that there was no statistically significant difference between the racial composition of the population of women who tested positive for cocaine and women who

were arrested, and therefore no disparity exists between white and black patients in these two categories. According to Dr. McCabe there was no significant racial disparity in implementing MUSC's policy.

11. MUSC receives financial assistance from the United States Department of Health and Human Services to render health care. MUSC uses part of this financing in its OB-GYN clinic to treat indigent patients. There is no evidence in the record that any other defendant receives relevant financial assistance from the United States.

Conclusions of Law

A. This court has jurisdiction pursuant to 28 U.S.C. §1331 (1994).

B. The plaintiffs brought this action in part under Title VI of the Civil Rights Act, Title 42, section 2000d. Section 2000d provides "[no] person in the United States shall on the ground of race, color, or national origin ... be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 2000d-4a defines "program" to "mean all of the operations of ... a department, agency, ... or other instrumentality of the state ... or an entire corporation ... which is principally engaged in the business of providing ... health care ... any part of which is extended Federal financial assistance." Federal regulations provide that a state or its agency cannot "directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race ...." 45 C.F. §80.3(b)(2).

C. While Title VI itself only prohibits intentional discrimination, the regulations promulgated thereto clearly prohibit a state agency from administering a

program which has a discriminatory impact on a protected person. Alexander v. Choate, 469 U.S. 287 (1985).

D. The plaintiffs bear the ultimate burden of persuading the court that the defendants' violated Title VI by establishing each of the following elements: (1) each defendant is an entity which receives funds from the federal government and is subject to the requirements of Title VI; (2) the plaintiffs are persons protected under Title VI and the regulations promulgated pursuant thereto; (3) the plaintiffs challenge a specific practice, procedure, or course of action of the defendants; and (4) the practice, procedure, or course of action of the defendants has an adverse discriminatory effect on the plaintiffs.

E. MUSC is the only defendant which has been shown to receive the requisite federal assistance. MUSC receives federal assistance from the Department of Health and Human Services and admits that it is subject to Title VI. Furthermore, the plaintiffs conceded at trial that MUSC is the only defendant subject to the requirements of Title VI.

F. Eight of the plaintiffs are black and therefore protected by the regulations promulgated under Title VI.

G. The plaintiffs challenge a specific practice, procedure, or course of action of the defendants. The plaintiffs challenge the following practices: (a) application of the policy only at MUSC; (b) application of the policy only to certain parts of MUSC; (c) application of the policy only to cocaine; and (d) application of testing criteria that would inevitably result in testing more blacks.

H. The plaintiffs must prove that the practice, procedure, or course of action caused the adverse

discriminatory effect on them. Walls v. City of Petersburg, 895 F.2d 188 (4th Cir. 1990); ElSton v. Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). For instance, the plaintiffs must show that the policy itself, as opposed to MUSC's general or maternity population, caused the disparate impact. None of the challenged practices, procedures, or courses of action of the defendants have an adverse discriminatory effect on the plaintiffs.

The plaintiffs introduced statistical evidence to prove their claim of disparity which the defendants countered with their own statistics. The evidence is conflicting, and the court concludes that the plaintiffs have not proven racial disparity through statistics. To do so, they must "offer statistical evidence of the kind and degree sufficient to show that the practice in question *caused*" the adverse impact on black patients. Elston, 997 F.2d at 1407 (emphasis added). In other words, the practice must affect black patients significantly more than white patients; if white patients are affected equally, then there is no disparate impact. Edwards v. Johnston County Health Dept., 885 F.2d 1215, 1223 (4th Cir. 1989). "The standard by which this greater adverse impact allegation must be tested is `whether the policy in question had a disproportionate impact on the minorities in the total group to which the policy was applied.'" Edwards, 885 F.2d at 1223 (quoting Betsey v Turtle Creek Associates, 736 F.2d 983, 987 (4th Cir. 1984)). Dr. Shapiro pointed to a large disparity between the MUSC maternity population and those who tested positive for cocaine, but the court concludes those are the wrong numbers to compare. To determine if the policy had an adverse impact on black women, one must compare the racial composition of women who tested positive for cocaine with those actually arrested, because the true impact of the policy was *the arrest*, not the UDS testing. Dr. McCabe testified there is no statistical difference between the racial composition of those two groups, and the court agrees.

Therefore, the plaintiffs have not shown a statistically significant disparate impact on black women in this case. Moultrie v. Martin, 690 F.2d 1078 (4th Cir. 1982).

Even though the plaintiffs have not proven a statistically significant disparate impact, the court has nevertheless considered each challenged practice *seriatim*. The plaintiffs first challenge the practice of employing the policy only at MUSC rather than at other hospitals in the Charleston, South Carolina metropolitan area. However, this challenge is irrelevant since MUSC is the only party subject to Title VI and MUSC cannot control or implement the policy at hospitals not controlled by MUSC. Therefore, the fact that the policy was not applied at other hospitals is not a practice that can be challenged under Title VI because it was not a practice administered by a defendant subject to Title VI.

The plaintiffs next challenge the practice of applying the policy only at certain discreet sections of MUSC. As the court found above, the policy was applied at all maternity departments throughout MUSC, and the practice challenged by the plaintiffs did not exist and cannot be used to prove disparate impact.

The plaintiffs further challenge the practice of applying the policy only to cocaine users. They argue that cocaine is a drug preferred by blacks, and thus a policy isolating it would necessarily impact blacks. This argument fails for two reasons. First, the alleged disparate use of cocaine by blacks causes the disparate impact, not the isolation of cocaine by MUSC. In this instance, the plaintiffs have not proven that the practice of the defendant causes the disparate impact. Secondly, the evidence shows that white cocaine users were treated the same as black cocaine users. If a patient had cocaine in her system, then she was given a

choice of treatment or jail. No disparity exists in that form of treatment.

Finally, the plaintiffs challenge the practice of employing subjective testing criteria. By targeting symptoms such as "no prenatal care" or "incomplete prenatal care" in deciding to test for drugs, MUSC allegedly targeted blacks because they typically have no or incomplete prenatal care. The plaintiffs have offered little evidence to support the allegation that blacks typically have incomplete or no prenatal care. In fact, they offered the testimony of Dr. Chasnoff who testified that the criteria were medically senseless and merely a proxy for selecting black women. This testimony addresses the legal justification argument and is based solely on Dr. Chasnoff's opinion, not on statistical analysis. Furthermore, the plaintiffs argue that because the number of black women tested for drugs rose after the policy was implemented, the criteria must *a fortiori* disparately impact blacks.

The court finds these arguments unpersuasive. MUSC adopted these medially valid criteria to avoid the very subjectivity in testing about which the plaintiffs complain. The evidence presented by the defendants shows that whenever a patient presented with one of the criteria, they were tested. There is no evidence that the criteria were applied subjectively. The allegation that more black maternity patients may have taken cocaine into their systems than white maternity patients does not prove that the policy disparately impacted black women. The plaintiffs have failed to prove that the MUSC policy disparately impacts black women in violation of Title VI.

I. However, assuming *arguendo* that the plaintiffs have shown a prima facie case for disparate impact under Title VI, the defendants can meet and rebut the plaintiffs prima facie case by showing the following: (a) they

had legitimate needs or goals; (b) the challenged practice, procedure, or course of action was necessary to meet those needs or goals; and (c) the practice, procedure, or course of action adopted by the defendants satisfied those needs or goals. The court concludes that the defendants have shown such.

J. MUSC officials stated that they implemented this policy to identify mothers who abused cocaine while pregnant and eliminate as far as possible the harmful effects of cocaine on fetuses. After implementing a protocol to test for illegal drugs, MUSC officials noticed an increase in the number of women who tested positive for those drugs. Furthermore, many women were not responding to MUSC requests to get help for their drug abuse. The policy at issue was then adopted and made mandatory throughout MUSC.

MUSC states that the policy isolates cocaine and is designed to get help to those who need it most: mothers abusing cocaine. The criteria were developed based on symptoms MUSC officials knew were associated with cocaine abuse, and made mandatory to supplant random or subjective application of UDS testing. These criteria limit testing to isolate potential problem patients for testing, and the UDS further narrows the field of potential patients. The court concludes that the policy was necessary to help cocaine-dependant mothers and their babies and actually achieved that goal as evidenced by the fact that a substantial majority of plaintiffs stopped abusing cocaine.

K. Since the defendants have rebutted the plaintiffs' prima facie case (if the same were in fact made out), the plaintiffs can only carry their ultimate burden of persuasion by demonstrating that other, less discriminatory practices would be as comparably effective as the challenged practice, but would result in less disproportionality. Wards

Cove Packing Co. v. Atonio, 490 U.S. 642, 660-61 (1989); Elston v Talladega County Bd. of Educ., 997 F.2d 1394, 1407 (11th Cir. 1993). The plaintiffs propose the following procedures, practices, or courses of action would result in less disproportionality: (a) focussing on all illegal drugs and alcohol, not just cocaine; or (b) testing all maternity patients.

The criteria set out in the policy were developed to minimize the costs of testing, because focussing on all illegal drugs or testing all patients would be prohibitively expensive and a waste of resources. MUSC cannot afford to implement the policy as suggested by the plaintiffs because of the sheer number of patients they treat every year. "Factors such as the cost or other burdens of proposed alternative selection devices are relevant in determining whether they would be equally as effective as the challenged practice in serving the [defendant's] legitimate ... goals." Wards Cove, 490 U.S. at 661. The court concludes these alternatives suggested by the plaintiffs, while laudable goals, are not as comparably effective as the challenged practices of MUSC. Therefore, the plaintiffs have failed to carry their ultimate burden of persuasion as required by Title VI. Since the plaintiffs have not prevailed on this claim, the court hereby directs the clerk to enter judgment in favor of the defendants on the plaintiffs' claims brought pursuant to Title VI and the regulations promulgated thereunder and to dismiss this action with prejudice.[1]

AND IT IS SO ORDERED.

/s/
C. WESTON HOUCK
CHIEF UNITED STATES
DISTRICT JUDGE

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[1] The plaintiffs' motion to substitute parties filed on April 11, 1997 is rendered moot by this order.

Charleston, South Carolina
September 29, 1997

ORIGINAL FILED
September 30, 1997

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CA#: 2:93-2624-12

CRYSTAL FERGUSON, THERESA JOSEPH, DARLENE NICHOLSON, PAULA HALE, ELLEN KNIGHT, PATRICIA WILLIAMS, LORI GRIFFIN, PAMELA PEAR, SANDRA POWELL and LAVERNE SINGLETON,

Plaintiffs,

v.

THE CITY OF CHARLESTON, SOUTH CAROLINA, ET AL.

Defendants.

JUDGMENT ENTERED 9/30/97

This action came before the Court, the Honorable C. Weston Houck, Chief United States District Judge presiding. The issues have been duly heard and a decision duly rendered.

Pursuant to the Court's September 29, 1997 Findings of Fact, Conclusions of Law and Order

IT IS ORDERED, ADJUDGED and DECREED that judgment is entered in favor of the defendants on the plaintiffs' claims brought pursuant to Title VI and the regulations promulgated thereunder.

IT IS FURTHER ORDERED that this case is hereby dismissed with prejudice.

LARRY W. PROPES, Clerk of Court

By: /s/
Shireen J. Nelson, Deputy Clerk

September 30, 1997
Charleston, South Carolina